



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2008

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2008-06926

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 310590.

The Garland Police Department (the "department") received a request for all records pertaining to case number 2008004418 concerning the requestor's son, as well as a statement made by the requestor's son. You state that you have released some of the requested information to the requestor. You also state that "no statement could be located responsive to this request."¹ You claim that portions of the submitted juvenile incident reports are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that the information that you have highlighted in red is excepted from disclosure under section 552.108. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the information you have highlighted in red relates to a pending criminal investigation. Based upon your representation and our review, we find that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the information highlighted in red pursuant to section 552.108(a)(1) of the Government Code.

You also claim that the information that you have highlighted in green is excepted from disclosure under section 552.130, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the Texas motor vehicle record information you have highlighted in green under section 552.130 of the Government Code.

Next, we address your argument under section 552.101 with regard to the remaining information. You assert that the submitted incident reports are law enforcement records pertaining to juveniles that are subject to section 58.007 of the Family Code.² However, you acknowledge that the requestor is the parent of one of the juvenile suspects listed in the submitted reports, and as such these records may not be withheld from her under section 58.007(c). *See* Fam. Code § 58.007(c), (e) (providing that, subject to the exceptions found in section 58.007(j), law enforcement records concerning a child may be inspected or copied by the child's parent). Accordingly, you seek to withhold only the identifying information of juvenile suspects other than the requestor's child under section 58.007(j) of the Family Code. *See id.* § 58.007(j)(1) (before a child's parent may inspect or copy a juvenile law enforcement record pertaining to their child, the custodian of those records must redact any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the parent's child). Upon review, we agree that the department must withhold the identifying information of juvenile suspects other than the requestor's child, which we have marked, under section 552.101 in conjunction with section 58.007(j)(1) of the Family Code. However, we find that you have failed to demonstrate that any of the remaining information that you have marked, including dates of birth, age, race, sex, height, weight, occupation, and business address information, constitutes identifying information for purposes of 58.007(j).

²We note that section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision", and encompasses section 58.007 of the Family Code. Gov't Code § 552.101.

In summary, the department may withhold the information highlighted in red under section 552.108. The department must withhold the information highlighted in green under section 552.130. The department must also withhold the information we have marked under section 552.101 in conjunction with section 58.007(j)(1) of the Family Code. The remaining submitted information must be released.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

³We note that because this requestor has a special right of access to information that would ordinarily be confidential under section 58.007 of the Family Code, the department must again seek a decision from this office if it receives another request for the same information from a different requestor.

complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Meesey", written in a cursive style.

Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/mcf

Ref: ID# 310590

Enc. Submitted documents