



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2008

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

OR2008-08107

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# 312611.

The City of Garland (the "city") received a request for information pertaining to the requestor's client. You state that you have released some of the requested information to the requestor. You also state that the city does not have some of the requested information.¹ You claim that portions of the submitted juvenile incident report 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 and the submitted photographs are 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 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 and the photographs relate to a pending criminal investigation. Based upon your representation and our review, we find that the release of this information would

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 dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 city may withhold the information highlighted in red and the photographs pursuant to section 552.108(a)(1) of the Government Code.²

We next address your argument under section 552.101 with regard to the remaining information. You assert that the submitted incident report is a law enforcement record pertaining to a juvenile that is subject to section 58.007 of the Family Code.³ However, you explain that the requestor is the attorney for the juvenile suspect listed in the submitted report. You acknowledge that under section 58.007(e) of the Family Code, these records may not be withheld from this requestor under section 58.007(c). *See* Fam. Code § 58.007(c),(e) (providing that a governmental body may not withhold juvenile law enforcement records from the juvenile's parent under section 58.007(c)). Accordingly, you seek to withhold only the identifying information of a juvenile victim and witness who are not the requestor's clients under section 58.007(j) of the Family Code. *See id.* § 58.007(j)(1) (personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted). Upon review, we agree that the city must withhold the identifying information of the juvenile victim and witness that 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, dates of birth, constitutes identifying information for purposes of 58.007(j).

In summary, the city may withhold the information highlighted in red and the submitted photographs under section 552.108. The city must withhold the information we have marked under section 552.101 in conjunction with section 58.007(j)(1) of the Family Code. The remaining information must be released.⁴

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

²As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure of the same information.

³We 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.

⁴We 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 city must again seek a decision from this office if it receives another request for the same information from a different requestor.

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 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 312611

Enc. Submitted documents

c: Ms. Nicole Hunt
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(w/o enclosures)