



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 3, 2009

Ms. Jerris Penrod Mapes
Assistant City Attorney
Killeen Police Department
402 North Second Street
Killeen, Texas 76541-5298

OR2009-02711

Dear Ms. Mapes:

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# 336155.

The Killeen Police Department (the "department") received a request for all incident reports for robberies, aggravated robberies, and aggravated assaults during a specified time period. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides that juvenile law enforcement records relating to delinquent conduct or conduct in need of supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See* Fam. Code § 51.03(a), (b) (defining "delinquent conduct" or "conduct indicating a need for supervision"). For purposes of 58.007, a "child" is a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *Id.* § 51.02(2). The relevant language of the Family Code under section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Id. § 58.007(c). Upon review, we agree that some of the submitted documents involve juvenile delinquent conduct, occurring after September 1, 1997. *See id.* § 51.03(a)-(b). Thus, report numbers 08-014143, 08-014855, 08-015220, 08-015310, and 08-015426 are confidential under section 58.007 and must be withheld in their entirety pursuant to section 552.101 of the Government Code.¹

You claim section 552.108(a)(1) for the remaining offense reports. Section 552.108(a)(1) of the Government Code 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 offense reports you have identified relate to pending criminal investigations and prosecutions. Based upon this representation and our review, we conclude that the release of these documents 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, section 552.108(a)(1) is applicable to the offense reports you have identified.

You claim section 552.108(a)(2) of the Government Code for some of the remaining offense reports. This section excepts from disclosure information concerning a criminal investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the submitted information includes investigations that did not result in convictions or deferred adjudications. Upon review, we agree that section 552.108(a)(2) is applicable to report numbers 08-013913, 08-014104, 08-014162, 08-014853, 08-014988, 08-015642, 08-015754, and 08-016297.

¹As our ruling for this information is dispositive, we need not address your remaining argument against disclosure.

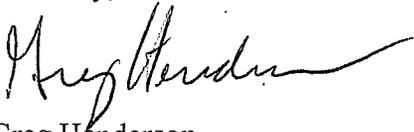
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87. Thus, with the exception of the basic front page offense and arrest information, you may withhold the reports you have identified under section 552.108(a)(1) and offense report numbers 08-013913, 08-014104, 08-014162, 08-014853, 08-014988, 08-015642, 08-015754, and 08-016297 under section 552.108(a)(2).

In summary, the department must withhold the reports you have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of the basic information, the department may withhold the reports you have identified under section 552.108(a)(1) of the Government Code and report numbers 08-013913, 08-014104, 08-014162, 08-014853, 08-014988, 08-015642, 08-015754, and 08-016297 under section 552.108(a)(2) of the Government Code. The remaining information must be released to the requestor.²

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

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²We note that the remaining information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147.

Ref: ID#336155

Enc. Submitted documents

c: Requestor
(w/o enclosures)