



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2009

Ms. Kelley K. Messer
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2009-03822

Dear Ms. Messer:

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# 338781.

The Abilene Police Department (the "department") received two requests for call sheets and arrest and case records pertaining to a particular case and all information pertaining to two named individuals prior to a particular date. You claim 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.

Initially we note the department has not submitted any call sheets to this office for review. Thus, we assume any responsive call sheets have been released to the requestor to the extent they exist. If not, the department must release such information immediately. *See* Gov't Code §§ 552.301(a), 302; Open Records Decision No. 664 (2000) (noting if governmental body concludes no exceptions apply to the requested information, it must release the information as soon as possible under circumstances).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Section 58.007 provides in pertinent part 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, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). In order for section 58.007(c) to apply, a child must be identified in the information at issue as a suspect or offender. *See id.* § 51.02(2) (defining "child" as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party. Upon review of the submitted information, we find most of the submitted information involves juvenile delinquent conduct

that occurred after September 1, 1997. In addition, report number 05-011800 pertains to a juvenile runaway. Thus, we find this report involves a juvenile engaged in conduct in need of supervision. *See id.* § 51.03(b) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from the child’s home without the consent of the child’s parent or guardian for a substantial length of time or without intent to return”). However, report number 05-012167 does not identify a juvenile suspect or offender engaged in delinquent conduct or conduct indicating a need for supervision for purposes of this section. Therefore, we conclude you have failed to establish section 58.007(c) is applicable to report number 05-012167, and it may not be withheld under this section.

We note the requestor is the parent of the juvenile offender in the reports subject to section 58.007; therefore, the information pertaining to the requestor’s child may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c). *See id.* § 58.007(e). We further note section 58.007(j) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, because you assert the submitted information is excepted under section 552.108 of the Government Code, we must address whether the information subject to section 58.007 is excepted under this section. *See id.* § 58.007(j)(2). We will also consider whether report number 05-012167 is excepted 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). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report numbers 08-022891 and 08-014431 relate to cases in which the statutes of limitations have not run and state release of these reports might interfere with the detection or investigation of the crimes at issue. You also state report number 04-9410 and the attached photographs relate to a case in which charges are still pending. Based on these representations, we conclude release of these reports and photographs 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. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, section 552.108(a)(1) is applicable to these reports and photographs.

Section 552.108(a)(2) excepts from disclosure information concerning an 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 the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. The department asserts report numbers 05-011800 and 05-012167 relate to investigations that did not result in conviction

or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to these reports.

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108 of the Government Code. In releasing basic information in the reports subject to section 58.007 of the Family Code, the department must redact any information that identifies or tends to identify juvenile arrestees other than the child of the particular requestor at issue. *See Fam. Code § 58.007(j)(1)*.

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,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/eeg

Ref: ID# 338781

Enc. Submitted documents

c: Requestor
(w/o enclosures)