



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2009

Ms. Linda M. Champion
Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2009-03854

Dear Ms. Champion:

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# 338037.

The City of Victoria (the "city") received a request for two specified incident reports. You indicate you will release a portion of the requested information. You claim the submitted information is 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.

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. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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.

Fam. Code § 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 at the time of the reported conduct. *See id.* § 51.02(2). Report number 2009-00000899 involves a juvenile suspect engaged in delinquent conduct. *See id.* § 51.03(a) (defining “juvenile delinquent conduct” for the purposes of section 58.007). Based on your representations and our review, we find report number 2009-00000899 is subject to section 58.007(c). It does not appear any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find report number 2009-00000899 is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 52.101 of the Government Code. We note, however, information relating to juvenile witnesses is not made confidential by section 58.007. *See id.* § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by child); Open Records Decision No. 628 at 6 (1994) (predecessor statute). Report number 2009-00000915 does not involve an allegation that a juvenile engaged in delinquent conduct or conduct indicating a need for supervision for purposes of section 58.007; therefore, this report is not confidential under section 58.007(c), and the city may not withhold it under section 552.101 on that ground.

You also claim report number 2009-00000915 is subject to section 552.108 of the Government Code. 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 state report number 2009-00000915 relates to an incident that is currently being investigated by the city’s police department for presentation to the Victoria County District Attorney’s Office for prosecution. Based on your representation and our review, we conclude the release of report number 2009-00000915 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). Accordingly, we find section 552.108(a)(1) is applicable to this report.

We note, and you acknowledge, section 552.108 is inapplicable to 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; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note, however, basic information described in *Houston Chronicle* does not include information subject to section 552.130 of the Government Code. Therefore, with the exception of basic information, the city may withhold report number 2009-00000915 under section 552.108(a)(1) of the Government Code.

In summary, the city must withhold report number 2009-00000899 under section 552.101 in conjunction with section 58.007 of the Family Code. Except for basic information, the city may withhold report number 2009-00000915 under section 552.108(a)(1).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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 338037

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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