



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2009

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager, & Smith, L.L.P.
Attorney for City of Colony
1800 Lincoln Plaza
Dallas, Texas 75201

OR2009-09858

Dear Mr. Hager:

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# 349442.

The Colony Police Department (the "department"), which you represent, received a request for the incident reports regarding a specified address filed by the requestors on specified dates. You claim the submitted incident reports are excepted from disclosure under sections 552.101, 552.103, 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 Subchapters B, D, and E.

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). Incident report numbers 2009-2984 and 2009-4725 involve fifteen year old individuals suspected of obstruction/retaliation and promotion of child pornography. Thus, we find these reports involve juvenile-delinquent conduct. *See id.* § 51.03(a) (defining “juvenile delinquent conduct” for the purposes of section 58.007). It does not appear any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find report numbers 2009-2984 and 2009-4725 are confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.¹ The remaining incident report number 2009-3747, however, does not contain an identified juvenile suspect or offender. Thus, you have failed to demonstrate how report number 2009-3747 involves a juvenile engaged in delinquent conduct or conduct in need of supervision as defined by the Family Code. *See id.* § 51.03(a), (b). Consequently, report number 2009-3747 may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

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). 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state incident report number 2009-3747 pertains to a pending criminal investigation. Based on your representations and our review, we determine 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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 information held to be public in *Houston Chronicle*, and includes a detailed description of

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

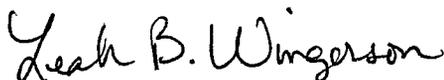
the offense. *See* 531 S.W.2d at 186-88. Thus, with the exception of basic information, the department may withhold incident report number 2009-3747 pursuant to section 552.108(a)(1) of the Government Code.² We note you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the department must withhold incident report numbers 2009-2984 and 2009-4725 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the department may withhold incident report number 2009-3747 pursuant to section 552.108(a)(1) of the Government Code.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/rl

Ref: ID# 349442

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not exempted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).