



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2009

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

OR2009-11491

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# 352519 (GCA Nos. 09-0443 and 09-0445).

The Garland Police Department (the "department") received two requests from different requestors for information related to two specified incidents. The first requestor also seeks information on two additional incidents and any information related to a named individual. You state that the department does not have information responsive to one of the incidents sought by the first requestor. You also state that the department has released some of the responsive information. You claim that portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."¹ Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 58.007 of the Family Code provides in part:

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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.

Fam. Code § 58.007(c), (e), (j). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). Section 58.007(c) is not applicable to information that relates to

a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender.

The submitted information involves a juvenile offender and therefore falls within the scope of section 58.007(c). In this instance, however, the second requestor is the attorney of the juvenile involved. Therefore, this requestor has a right to inspect law enforcement records concerning her client under section 58.007(e). *See id.* § 58.007(e). Section 58.007(j) states further that information subject to any other exception to disclosure under the Act or other law must also be redacted. *Id.* § 58.007(j)(2). In addition, we note that the first requestor is the step-parent of the juvenile offender listed on the report. If this first requestor is not a legal guardian of the juvenile offender listed in the report, then the submitted information must be withheld in its entirety from this requestor under section 552.101 in conjunction with section 58.007 of the Family Code. However, to the extent this requestor is a legal guardian of the juvenile offender, she may inspect or copy any law enforcement records concerning her own child under section 58.007(e). *Id.* § 58.007(e). Accordingly, we will address your remaining argument against disclosure of this information to the extent the requestors have a right of access under section 58.007(j).

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 that the submitted information marked in red and the submitted photographs relate to a pending criminal investigation. Based on this representation, we conclude that 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. 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). Thus, the department may withhold the information you have marked in red and the submitted photographs under section 552.108(a)(1) of the Government Code.

In summary, if the first requestor is not the listed juvenile’s legal guardian, the department must withhold the submitted information in its entirety from this requestor under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. However, to the extent the first requestor is the juvenile’s legal guardian and with regard to the second requestor, the department may withhold the information you have marked in red and the submitted photographs under section 552.108(a)(1) of the Government Code. The remaining information must be released.

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 352519

Enc. Submitted documents

c: Requestor
(w/o enclosures)