



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 4, 2009

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P. O. Box 839966  
San Antonio, Texas 78283-3966

OR2009-12562

Dear Mr. Weir:

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# 354610 (ORR 2009-3700).

The San Antonio Police Department (the "department") received a request for the police reports from case numbers 90312457 and 90309358. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses 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). Section 58.007 provides in relevant part:

(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.

Fam. Code § 58.007(c). 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 report number 90309358 involves a juvenile engaged in conduct in need of supervision that occurred after September 1, 1997. *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”). Thus, report number 90309358 is generally confidential pursuant to section 58.007(c) of the Family Code.<sup>1</sup>

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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the remaining submitted information is part of an open criminal investigation. Based on your representation and our review of the remaining submitted information, we conclude that release of report number 90312457 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 [14<sup>th</sup> 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). Thus, section 552.108(a)(1) is applicable to report number 90312457.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument for this information.

We note that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such 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). Thus, with the exception of basic information, the department may generally withhold report number 90312457 under section 552.108(a)(1) of the Government Code.

We note, however, the requestor is a representative of the San Antonio Housing Authority ("the housing authority"), who states the requested police reports will be used to evict tenants. The Texas Department of Public Safety (the "DPS") is required to provide criminal history record information ("CHRI") to a noncriminal justice agency authorized to receive CHRI pursuant to a federal statute, executive order, or state statute. Gov't Code § 411.083(b)(2). In Open Records Decision No. 655 (1997), this office concluded that a local housing authority is a noncriminal justice agency authorized by federal statute to obtain the CHRI of adult and juvenile tenants. Open Records Decision No. 655 at 4 (1997). The federal Housing Opportunity Program Extension Act of 1996 authorizes housing authorities to obtain criminal records of tenants. Section 1437d(q)(1)(A) of chapter 42 of the United States Code provides "[n]otwithstanding any other provision of law, . . . the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, covered housing assistance for purposes of applicant screening, lease enforcement, and eviction." 42 U.S.C. § 1437d(q)(1)(A). Thus, to the extent the requestor is seeking CHRI regarding tenants of public housing, the housing authority is authorized to receive CHRI from the DPS. Pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from the DPS is also authorized to "obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]." Gov't Code § 411.087(a)(2). Accordingly, the housing authority is also authorized to receive CHRI from a local criminal justice agency, such as the department. See Open Records Decision No. 655 (1997); see also Gov't Code §§ 411.083(b)(2), 411.087(a). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2).

Federal law limits the purposes for which a public housing authority may request CHRI. Federal law provides that (1) public housing agencies may receive CHRI for adult applicants for public housing or for adult tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. 42 U.S.C. § 1437d(q)(1)(A). In this instance, the requestor states that he requested the information at issue for eviction purposes. Consequently, if the requested law enforcement records relate to tenants of the housing authority, we conclude that the department must make available to the requestor the criminal history record information from report number 90312457,

otherwise subject to section 552.108, that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, with the exception of basic information, the department may withhold the remaining information in report number 90312457 under section 552.108 of the Government Code. However, if the requested law enforcement records do not relate to tenants of the housing authority, then, with the exception of basic information, the department may withhold report number 90312457 under section 552.108 of the Government Code.

Access to a juvenile tenant's CHRI is governed by section 1437d(q)(1)(C) of chapter 42 of the United States Code, which provides "[a] law enforcement agency described in subparagraph (A) shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality." 42 U.S.C. § 1437d(q)(1)(C). Juvenile justice information is confidential but may be released to "a person or entity to which [DPS] may grant access to adult criminal history records as provided by Section 411.083, Government Code." Fam. Code § 58.106(a)(2). As noted above, section 411.083(b)(2) of the Government Code requires DPS to provide CHRI to a noncriminal justice agency authorized to receive CHRI pursuant to a federal statute, executive order, or state statute. Gov't Code § 411.083(b)(2). Because housing authorities are authorized to obtain adult CHRI under sections 1437d(q)(1)(A) and 411.083(b)(2), they are also authorized to obtain similar information regarding juveniles. *See* ORD 655 (concluding section 1437d(q)(1)(C) authorizes local housing authority to obtain CHRI of juvenile tenants). The housing authority, however, may only obtain and use juvenile information in accordance with section 1437d(q)(1)(A). *See also* Gov't Code § 411.084(2)(B) (stating CHRI may only be disclosed or used as authorized or directed by another statute). Thus, any CHRI of a juvenile tenant of public housing contained in report number 90309358 must be released to this requestor in accordance with section 1437d(q)(1)(C) of chapter 42 of the United States Code and Open Records Decision No. 655. *See also* 24 C.F.R. § 5.903 (describing public housing authorities' access to criminal records). The remainder of report number 90309358 must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. However, if the requested law enforcement records do not relate to a juvenile tenant of the housing authority, then the department must withhold report number 90309358 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code in its entirety.

In summary, if the submitted law enforcement records are related to tenants of the housing authority, the department must release the CHRI of adult and juvenile tenants of public housing in accordance with section 1437d(q)(1) of chapter 42 of the United States Code and

Open Records Decision No. 655.<sup>2</sup> In that instance, the remainder of report number 90309358 must be withheld under section 552.101 in conjunction with section 58.007(c) of the Family Code, and with the exception of basic information, the remainder of report number 90312457 may be withheld under section 552.108 of the Government Code. Conversely, if the submitted law enforcement records do not relate to tenants of the housing authority, the department may withhold all but basic information under section 552.108 of the Government Code from report number 90312457 and must withhold report number 90309358 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code in its entirety.

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](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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/jb

Ref: ID# 354610

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from a requestor without such a right of access.