



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 29, 2010

Ms. Dori Wind
Special Counsel
Harris County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2010-04341

Dear Ms. Wind:

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# 374223 (C.A. File No. 10GEN0016).

The Harris County Sheriff's Department (the "sheriff") received a request for information pertaining to a specified 9-1-1 call. You claim that the requested 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 public 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 protected by other statutes. The relevant language of section 58.007 of the Family Code reads 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 Subchapters 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). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007(e) allows the review or copy of juvenile law enforcement records by a child's parent or guardian. *Id.* § 58.007(e). However, any personally identifiable information concerning another juvenile suspect, offender, victim, or witness must be redacted. *Id.* § 58.007(j)(1). Section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.007(j)(2).

The submitted documents pertain to juvenile delinquent conduct occurring after September 1, 1997; therefore, the submitted information is subject to section 58.007. However, the requestor is the parent of one of the juvenile offenders. Accordingly, information pertaining to the requestor's child may not be withheld from him under section 552.101 of the Government Code on the basis of section 58.007(c). *See id.* § 58.007(e). However, the sheriff must redact the personally identifiable information concerning any other juvenile suspect, offender, victim, or witness pursuant to section 58.007(j)(1). *Id.* § 58.007(j)(1). In addition, because the sheriff asserts that the remaining information is excepted under sections 552.101 and 552.108 of the Government

Code, we must address whether the information at issue is excepted under those sections. *See id.* § 58.007(j)(2).

Section 552.108(a)(2) of the Government Code 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 that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You indicate the submitted information relates to a concluded case that did not result in a conviction or deferred adjudication. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable to the submitted information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff may withhold the submitted information pursuant to section 552.108(a)(2) of the Government Code. However, in releasing basic information, the sheriff must withhold any personally identifiable information concerning any juvenile offender other than the juvenile to whom the requestor is a parent pursuant to section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. *See* Fam. Code § 58.007(j)(1). In addition, you claim that some of the remaining basic information may be withheld under section 552.101 of the Government Code. Accordingly, we address your claims under this section for the remaining information.

Section 552.101 also encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988).

You indicate the complainant in the submitted information reported a suspected incident of criminal mischief, a misdemeanor, to the sheriff. You do not indicate, nor does it appear, the

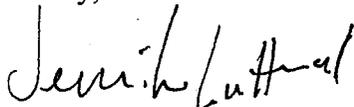
subject of the complaint knows the identity of the complainant. Based upon your representations and our review, we conclude the sheriff has demonstrated the applicability of the common-law informer's privilege. Therefore, the sheriff may withhold the identifying information of the complainant, which we have marked, from basic information pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege.¹

In summary, with the exception of basic information, the sheriff may withhold the submitted information pursuant to section 552.108(a)(2) of the Government Code. However, in releasing basic information, the sheriff must withhold any personally identifiable information concerning any juvenile offender other than the juvenile to whom the requestor is a parent pursuant to section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The sheriff may withhold the identifying information of the complainant, which we have marked, from basic information pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The remaining basic information must be released.²

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

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

¹As our ruling is dispositive, we need not address your remaining argument under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

²We note that the information being released contains confidential information to which the requestor has a right of access. See Fam. Code § 58.007(e). Thus, if the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office.

Ref: ID# 374223

Enc. Submitted documents

c: Requestor
(w/o enclosures)