



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2011

Mr. Jason D. King
Akers & Boulware-Wells, L.L.P.
6618 Sitio Del Rio Boulevard, Building E, Suite 102
Austin, Texas 78730

OR2011-09287

Dear Mr. King:

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#:426829.

The Balch Springs Police Department (the "department"), which you represent, received a request for specified offense and arrest reports. 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. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides in pertinent part 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 [the Act], or other law.

Fam. Code § 58.007(c), (e), (j)(1)-(2). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007(c), child means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon our review, we find case number 07-102350 does not identify any juvenile suspects or offenders for the purposes of section 58.007. As such, section 58.007 is not applicable and the department may not withhold case number 07-102350 on this basis.

We find the remaining case numbers consist of law enforcement records that involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Accordingly, these reports are subject to section 58.007(c). It does not appear that any of the exceptions in section 58.007 of the Family Code apply to the case number in Exhibit C. Thus, Exhibit C must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c).¹

However, in this instance, the requestor is the juvenile suspect or offender listed in the remaining case numbers in Exhibit B. Section 58.007(e) allows the requestor access to his own juvenile law enforcement records. *Id.* § 58.007(e). Section 58.007(j)(1), however, provides that any personally identifiable information about a juvenile who is not the

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

requestor must be redacted; thus, the department must withhold the information we have marked in case number 08-100531. *See id.* § 58.007(j)(1). Furthermore, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, we will consider the department's remaining argument.

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in 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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that case number 07-102350 and the remaining case numbers in Exhibit B pertain to criminal cases that concluded in a result other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to case number 07-102350 and the remaining case numbers in Exhibit B.

However, 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). 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 considered to be basic information). Thus, with the exception of basic information, the department may withhold case number 07-102350 and the remaining case numbers in Exhibit B under section 552.108(a)(2) of the Government Code. However, in releasing the basic information, the department must withhold the information we have marked in case number 08-100531 under section 58.007(j)(1) of the Government Code.

In summary, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of basic information, the department may withhold case number 07-102350 and the remaining case numbers in Exhibit B under section 552.108(a)(2) of the Government Code. However, in releasing the basic information, the department must withhold the information we have marked in case number 08-100531 under section 552.101 of the Government Code in conjunction with 58.007(j)(1) of the Government Code.²

²We note the requestor has a right of access to the information being released, which is confidential with respect to the general public. *See* Fam. Code. § 58.007(e). Therefore, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.

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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/em

Ref: ID# 426829

Enc. Submitted documents

c: Requestor
(w/o enclosures)