



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 27, 2013

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
Transactions Division
Travis County
P.O. Box 1748
Austin, Texas 78767-1748

OR2013-10994

Dear Ms. Winn:

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# 491525.

The Travis County Sheriff's Office (the "sheriff's office") received a request for information regarding the requestor, the requestor's husband, and the requestor's four children. You claim the submitted information is 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." Gov't Code § 552.101.¹ 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,

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

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 delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under subsection 58.007(c). For purposes of subsection 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 review, we find report numbers 11-24794, 11-26841, and 11-28409 involve juvenile delinquent conduct occurring after September 1, 1997. *See id.* § 51.03(a) (defining juvenile "delinquent conduct" for purposes of section 58.007). Therefore, report numbers 11-24794, 11-26841, and 11-28409

are within the scope of subsection 58.007(c). In this instance, however, the requestor is the parent of one of the juvenile suspects in the reports at issue. Therefore, the requestor has a right to inspect or copy her child's law enforcement records, and the sheriff's office may not withhold report numbers 11-24794, 11-26841, and 11-28409 from this requestor under section 552.101 of the Government Code in conjunction with subsection 58.007(c) of the Family Code. *See id.* § 58.007(e). However, subsection 58.007(j)(1) provides personally identifiable information concerning any other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). Additionally, subsection 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). Accordingly, we will consider whether report numbers 11-24794, 11-26841, and 11-28409 are otherwise excepted under the Act. Additionally, we will address your arguments for the remaining information.

Section 552.108 of the Government Code provides, in relevant part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]
- (2) 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)(1)-(2). Subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state report numbers 11-24794, 11-25657, 11-28409, and 12-9698 pertain to investigations that did not result in conviction or deferred adjudication. Accordingly, we find section 552.108(a)(2) is applicable to report numbers 11-24794, 11-25657, 11-28409, and 12-9698. You cite to subsection 552.108(a)(1) and state report number 11-26841 is the subject of an open investigation. However, you also state report number 11-26841 pertains to an inactive criminal investigation that did not result in a conviction or a deferred

adjudication, and is, therefore, excepted from disclosure under subsection 552.108(a)(2). Because you have provided this office with contradictory representations with respect to report number 11-26841, we find you have failed to demonstrate the applicability of section 552.108 to that report. *See* Gov't Code § 552.301(e)(1)(A). Therefore, we conclude the sheriff's office may not withhold report number 11-26841 under section 552.108 of the Government Code.

However, 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include the identities of victims, witness, or other involved parties, but does include the identities of complainants. Further, we note while basic information does include the identity of an arrestee, it does not include the identity of a suspect. Therefore, with the exception of basic information, the sheriff's office may withhold report numbers 11-24794, 11-25657, 11-28409, and 12-9698 under section 552.108(a)(2).

As noted above, section 58.007(j)(1) provides that any personally identifiable information concerning any other juvenile suspects, offenders, victims, or witnesses must be redacted. *See* Fam. Code § 58.007(j)(1). Accordingly, in releasing the basic information from report number 11-28409, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. Additionally, the sheriff's office must withhold the information we marked in report number 11-26841 under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.

In summary, with the exception of basic information, the sheriff's office may withhold report numbers 11-24794, 11-25657, 11-28409, and 12-9698 under section 552.108(a)(2). In releasing the basic information from report number 11-28409, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The sheriff's office must also withhold the information we marked in report number 11-26841 under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 491525

Enc. Submitted documents

c: Requestor
(w/o enclosures)