



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2006

Mr. Paul F. Wieneskie
Cribbs & McFarland
P.O. Box 13060
Arlington, Texas 76094

OR2006-02402

Dear Mr. Wieneskie:

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# 243799.

The Euless Police Department (the "department"), which you represent, received two requests for information pertaining to a specified police report. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses confidentiality provisions such as 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. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. See Fam. Code § 51.02(2). The relevant language of section 58.007(c) 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 Subchapter B.

Fam. Code § 58.007(c). Section 58.007 is applicable to information that relates to a juvenile as a suspect or offender, and not as a complainant, victim, witness, or other involved party. We find that the juvenile identified in the requested police report is not listed as a suspect or offender of the charged crime in the report. Thus, this report is not confidential under section 58.007 and may not be withheld pursuant to section 552.101 of the Government Code.

However, section 552.101 also encompasses the common law right to privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 633. In addition, we note that common law privacy applies to the names of juvenile offenders; therefore, this information is also confidential and must be withheld under section 552.101. *See Open Records Decision No. 394 (1983); cf. Fam. Code § 58.007.* We have reviewed the submitted records and marked the information that must be withheld pursuant to section 552.101 in conjunction with common law privacy.

We note the submitted documents contain Texas-issued motor vehicle information. Section 552.130 of the Government Code excepts from public disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. After reviewing the submitted information, we find that the department must withhold the Texas-issued motor vehicle record information we have marked pursuant to section 552.130. We note, however, that some of the information at issue pertains to one of the requestors. Because section 552.130 protects individual privacy interests, that requestor has a special right of access under section 552.023 of the Government Code to his own Texas-issued motor vehicle record information. *See Gov't Code § 552.023 (person has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest).*

We also note the submitted information contains credit card account numbers. Section 552.136 of the Government Code provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. The department must withhold the account numbers that we have marked pursuant to section 552.136 of the Government Code.

We further note that the submitted information contains a social security number. Section 552.147 of the Government Code¹ provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. The department must withhold the social security number we have marked under section 552.147. We note, however, that the social security number pertains to one of the requestors. That requestor is entitled to his own social security number, and it may not be withheld from him under section 552.147. See Gov't Code § 552.023.

In summary, the department must withhold the private information we have marked under section 552.101 in conjunction with common law privacy, the Texas-issued motor vehicle information we have marked under section 552.130, the credit card account numbers we have marked under section 552.136, and the social security number we have marked under section 552.147 of the Government Code. The requestor to whom the social security number and motor vehicle information pertains has a right to his own information under section 552.023. The remaining information must be released to the requestors.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

¹Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

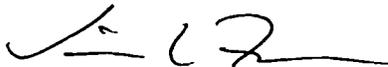
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/er

Ref: ID# 243799

Enc. Submitted documents

c: Mr. Mike Reeves
1903 Greenbriar Drive
Eules, Texas 76036
(w/o enclosures)