



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 5, 2009

Ms. Cathie Childs
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR2009-01561

Dear Ms. Childs:

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# 334097.

The Austin Police Department (the "department") received a request for the booking sheets and arrest photos "on every individual arrested from 11/11/08 to 11/17/08." You state that some responsive information will be released to the requestor. You indicate that the department will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

²We note that you also initially raised section 552.101 in conjunction with section 261.201 of the Family Code and common-law privacy, but have submitted no arguments with regard to how or why section 261.201 or common-law privacy is applicable to any of the submitted information. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments demonstrating applicability of its claimed exceptions to information at issue). You also raised section 552.129 of the Government Code, but submitted no arguments with regard to how or why section 552.129 is applicable to any of the submitted information. *See id.* Therefore, we assume you no longer urge your section 552.129, section 261.201, or privacy claims.

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 made confidential by other statutes. Section 58.007 of the Family Code makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, and thus, is encompassed by section 552.101 of the Government Code. 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 Subchapters B, D, and E.

Fam. Code. § 58.007(c). Upon review we find that some of the submitted information involves juvenile conduct that occurred after September 1, 1997. You state that none of the exceptions in section 58.007(c) of the Family Code apply. Accordingly, we find that the information we have marked is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. We note, however, that the remaining submitted records do not list a juvenile suspect or offender and are therefore not confidential under section 58.007(c) of the Family Code; thus, the department may not withhold the remaining information under section 552.101 on that basis.

You raise section 552.108 of the Government Code as an exception to disclosure of the remaining information. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that "there will be booking sheets and arrest photographs the department will not want to release because of ongoing investigations or prosecutions." However, you do not state that

the remaining information relates to an ongoing investigation or prosecution for the purposes of section 552.108(a)(1). Consequently, we find that you have not established that release of the remaining information 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 [14th 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). We therefore conclude that the department may not withhold any of the remaining information under section 552.108 of the Government Code.

You also claim that the remaining information contains Texas motor vehicle information excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a Texas motor vehicle driver's license or permit and a Texas motor vehicle title or registration. Gov't Code § 552.130. Upon review, however, we find that the remaining information does not contain any Texas motor vehicle information. Therefore, no portion of the remaining information may be withheld under section 552.130 of the Government Code.

In summary, the information we have marked is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. The remaining submitted information must be released to the requestor.

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 at (512) 475-2497.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jb

Ref: ID# 334097

Enc. Submitted documents

c: Requestor
(w/o enclosures)