



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 11, 2009

Mr. Robert E. Reyna
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2009-01825

Dear Mr. Reyna:

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# 334826 (ORR 2008-2219).

The San Antonio Police Department (the "department") received a request for "key cards" and mobile data transmitter records of a named officer during a specified time, including the location and speed of the officer's vehicle. You claim that the requested 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.

Initially, we note that a portion of the submitted information is not responsive to the instant request for information. The requestor asks for certain information within a particular time period. Thus, any information created outside of this particular time period is not responsive. We have marked the non-responsive information. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release that information in response to the request.

Next, we note that some of the submitted information appears to have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-00945 (2009). With regard to the submitted information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude that, as we have no indication that the law, facts, and circumstances on which the

prior ruling was based have changed, the department must continue to rely on Open Records Letter No. 2009-00945 as a previous determination and withhold or release the identical information in accordance with that ruling. See Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). For the information not encompassed by the previous ruling, we will address the submitted argument.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). 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 *id.* §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information pertains to an open investigation. However, upon review of the information at issue, which consists of reports pertaining to several different incidents, we find that you have failed to explain how release of any portion of the submitted information would interfere with a particular criminal investigation or prosecution. Thus, you have not established that section 552.108(a)(1) applies to the submitted information. Thus, none of the submitted information may be withheld under section 552.108(a)(1) of the Government Code.

We note that the submitted information contains information that is subject to sections 552.101 and 552.130 of the Government Code.¹ Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information that is made confidential by statute. Gov’t Code § 552.101. Section 552.101 encompasses section 58.007 of the Family Code, which provides that juvenile law enforcement records relating to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential. Section 58.007(c) provides as follows:

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:

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

- (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, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). We have marked reports pertaining to juveniles engaged in conduct in need of supervision that occurred after September 1, 1997. *See id.* § 51.03(b)(3) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). This information is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision No. 545 (1990). The submitted transmission reports contain personal financial information. We find that there is not a legitimate public interest in the release of this information. Accordingly, the department must withhold the information that we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information we have marked in the submitted reports.

In summary, to the extent the pertinent facts and circumstances have not changed since the issuance of this ruling, the department must comply with Open Records Letter

No. 2009-00945 for the information that was at issue in that ruling. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with 58.007 of the Family Code and common-law privacy. The department must also withhold the information we have marked under section 552.130 of the Government Code. The remaining responsive 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 at (512) 475-2497.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 334826

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²We note the submitted information contains social security numbers. Section 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.