



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 13, 2009

Mr. Marc J. Schnall
Langley & Banack
Trinity Plaza II
745 East Mulberry, Suite 900
San Antonio, Texas 78212-3166

OR2009-01953

Dear Mr. Schnall:

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# 334870.

The City of Selma (the "city"), which you represent, received a request for information pertaining to a named officer. You state you will release some of the requested information to the requestor. You claim that portions of the remaining information are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130 and 552.147 of the Government Code. We have considered the exceptions 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." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 58.007 of the Family 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 Subchapter B.

Fam. Code § 58.007(c). Under section 58.007, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007, a “child” is person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Based on your representations and our review, we conclude that the information we have marked involves juvenile delinquent conduct that occurred after September 1, 1997. You indicate that none of the exceptions in section 58.007 apply to this information. Therefore, we find that section 58.007 is applicable to the information we have marked and it must be withheld under section 552.101. However, the remaining information you have marked for under section 58.007 consists of an employment investigation of a police officer and thus does not constitute a law enforcement record or file of juvenile conduct. Accordingly, section 58.007 is not applicable to this information and it may not be withheld on that basis. As you raise no other exception to disclosure for this information, you must release it to the requestor.

Next, you raise section 552.108 of the Government Code for some 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). 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 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 information you have marked relates to a pending criminal investigation. Based upon this representation and our review, we conclude that the release of the information at issue 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. Thus, we agree that the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.117(a)(2) excepts from disclosure the home address and telephone number, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under sections 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure. You indicate that the officer whose information is the subject of this request is a peace officer under article 2.12 of the Code of Criminal Procedure. Accordingly, the city must withhold the information you have marked under section 552.117 of the Government Code.

Section 552.130 excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. *Id.* § 552.130. Accordingly, the city must withhold the Texas motor vehicle record information you have marked, along with the additional information we have marked, under section 552.130.

Finally, you raise section 552.147 of the Government Code for some of the remaining information. Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. We agree that the city may withhold the social security numbers that you have marked under section 552.147 of the Government Code.¹

In summary, the city must withhold the information we have marked under section 58.007(c) of the Family Code in conjunction with section 552.101 of the Government Code. The city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The city must withhold the information you have marked under section 552.117 of the Government Code. The Texas motor vehicle record information you have marked, and additional information we have marked, must be withheld under section 552.130 of the Government Code. The social security numbers you have marked may be withheld under section 552.147 of the Government 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.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

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.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "C. Alvarado".

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/cc

Ref: ID# 334870

Enc. Submitted documents

cc: Requestor
(w/o enclosures)