



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2009

Mr. Chad Cowan
Attorney at Law
P.O. Box 68
Anson, Texas 79501

OR2009-02952

Dear Mr. Cowan:

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# 336694.

The City of Anson (the "city"), which you represent, received a request for all offense reports and citations issued from June 1, 2008 until December 11, 2008. You claim that the requested information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note some of the submitted information was created after the date the request for information was received by the city. Thus, this information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. This section encompasses information protected by section 58.007 of the Family Code. Law enforcement records involving juvenile offenders and relating to conduct

¹We understand you to assert that a portion of the submitted information is a representative sample of the requested information. We assume that this representative sample 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.

²The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

that occurred on or after September 1, 1997 are confidential under section 58.007. 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 51.02(2)(A) defines “child” as a person who is ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). 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. *See id.* § 58.007(c). We note that section 58.007 does not make information relating to traffic offenses confidential. *See id.* §§ 51.02(16) (defining traffic offense), 51.03(a) (delinquent conduct does not include traffic offense), 51.03(b) (conduct indicating need for supervision does not include traffic offense). We have reviewed the responsive information and find that a portion of it, which we have marked, involves allegations of juvenile conduct in violation of penal statutes that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). Thus, this information is confidential under section 58.007(c), and must be withheld from disclosure under section 552.101 of the Government Code.³

Section 552.101 also encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the

³As our ruling on this information is dispositive, we need not address your remaining arguments against disclosure of this information.

Texas Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411. The city must withhold the CHRI that we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Section 552.108(a)(1) 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 [.]" *Id.* § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) 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 incident reports submitted as Exhibit A relate to pending criminal investigations. Based upon your representation and our review, we conclude that the release of this 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.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to Exhibit A.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes, among other things, the identification and description of the complainant and "a detailed description of the offense." *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). You seek to withhold the narrative portions of the submitted reports under section 552.108. However, the city must release a sufficient portion of the narrative section of the submitted reports to encompass a detailed description of the offense. In addition, the city must release the identification and description of those individuals identified as complainants in the submitted reports as basic information. We note that the identification and description of witnesses, however, are protected under section 552.108(a)(1) and may be withheld under that section. We also note basic information described in *Houston Chronicle* does not include information subject to section 552.130 of the Government Code. Thus, with the exception of basic information, the city may withhold Exhibit A pursuant to section 552.108(a)(1) of the

Government Code. We note you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Id. § 552.130(a)(1)-(3). We note that this exception is not applicable to out-of-state driver's license and motor vehicle record information. Accordingly, except as we have marked for release, the city must withhold the driver's license and motor vehicle record information you have marked, as well as the information we have marked, under section 552.130 of the Government Code.

Finally, section 552.147 of the Government Code states that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.⁴ *Id.* § 552.147. Upon review, we agree the city may withhold the marked social security numbers under section 552.147 of the Government Code.

In summary, in conjunction with section 552.101 of the Government Code: (1) the city must withhold the information we have marked under section 58.007 of the Family Code, and (2) the city must withhold the CHRI that we have marked under federal law and chapter 411 of the Government Code. With the exception of basic information, the city may withhold Exhibit A under section 552.108(a)(1) of the Government Code. Except as we have marked for release, the city must withhold the driver's license and motor vehicle record information you have marked, as well as the information we have marked, under section 552.130 of the Government Code. The city may withhold the marked social security numbers under section 552.147 of the Government Code. The remaining responsive information must be released.

⁴Section 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. Gov't Code § 552.147(b).

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# 336694

Enc. Submitted documents

cc: Requestor
(w/o enclosures)