



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 31, 2009

Ms. Kristy Ashberry
City Secretary
City of Rockwall
385 South Goliad
Rockwall, Texas 75087

OR2009-10620

Dear Ms. Ashberry:

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# 350765.

The Rockwall Police Department (the "department") received a request for the personnel records of two named police officers. You claim that the requested information is excepted from disclosure under sections 552.102 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that portions of the submitted information are not responsive to the present request. The requestor excludes driver's license numbers, social security numbers, and home addresses from his request. Thus, this information is not responsive to the instant request. The department need not release non-responsive information in response to this request, and this ruling will not address that information or the exceptions you have claimed regarding that information.

Next, we note the submitted information includes peace officer's accident reports which appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has not provided

the department with two of the three specified items of information regarding these accidents. Therefore, the department must withhold the accident report forms we have marked pursuant to section 550.065(b) of the Transportation Code.¹

Next, we note that some of the submitted information falls within the scope of section 552.101 of the Government Code.² 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. This exception encompasses information that other statutes make confidential. Section 58.007 of the Family Code provides in part:

(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). 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). We have reviewed the submitted information and find that a portion of it, which we have marked, involves allegations of juvenile delinquent 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

¹As our ruling is dispositive, we need not address your arguments against disclosure for this information.

²Unlike other exceptions to disclosure under the Act, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

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

We now address your argument under section 552.108 of the Government Code for 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 id.* §§ 552.108 (a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the remaining information relates to a pending criminal investigation and prosecution in which the two named officers are involved. You state that release of the information at issue would interfere with the ongoing criminal case. Based upon this representation and our review, we conclude that release of the remaining information would generally 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 note, however, that the information you seek to withhold under section 552.108 includes citations. Because copies of the citations were provided to the individuals who were cited, we find that release of the citations will not interfere with the detection, investigation, or prosecution of crime. Therefore, the department may not withhold the citations, which we have marked, under section 552.108(a)(1). The department may withhold the remaining information under section 552.108(a)(1).⁴

You claim the marked citations are excepted under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). This exception applies when the release of information would result in a violation of the common-law right to privacy. *See Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, *writ ref’d n.r.e.*). The common-law right to privacy protects information that (1) contains highly intimate or embarrassing facts about a person’s private affairs such that its release would be highly objectionable to a reasonable person, and (2) is of no legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types of information considered intimate or 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 683. You have not established that any part of the citations at issue is highly intimate or embarrassing and not of legitimate public concern; therefore, the department may not withhold any of this information under section 552.102 of the Government Code.

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure for this information.

We note the citations contain Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). The department must withhold the Texas motor vehicle record information that we have marked in the citations under section 552.130.

In summary, the department must withhold the accident report forms we have marked pursuant to section 550.065(b) of the Transportation Code. The department must also 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. With the exception of the marked citations, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. The department must withhold the Texas motor vehicle record information that we have marked in the citations under section 552.130 of the Government Code. The remaining responsive information in the citations 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 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# 350765

Enc. Submitted documents

cc: Requestor
(w/o enclosures)