



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2009

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2009-14025

Dear Ms. Sandoval-Walker:

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# 358976.

The El Paso Police Department (the "department") received a request for the report for a specific criminal charge against the requestor's client, and any other records concerning his client. You state you have released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007 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, D, and E.

Fam. Code § 58.007(c). We have reviewed the submitted reports and find police report no. 03-194163 involves allegations of juveniles engaged in delinquent conduct that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this report. Therefore, police report no. 03-194163 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. We note, however, that police report no. 03-149047 involves an individual who was eighteen years old at the time of the arrest. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Therefore, the department may not withhold police report no. 03-149047 on the basis of section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

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 the information in police report no. 09-201231 concerns a pending criminal investigation. Based upon this representation, 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 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, section 552.108(a)(1) of the Government Code is applicable to police report no. 09-201231.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold police report no. 09-201231 under section 552.108(a)(1) of the Government Code.

You also raise section 552.130 of the Government Code. 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(a)(1), (2). We note that section 552.130 protects personal privacy. The Texas motor vehicle record information in the remaining information belongs to the requestor's client. Thus, the requestor in this instance will have a right of access to this information. See *id.* § 552.023(a) ("[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the department may not withhold any Texas motor vehicle record information in the remaining documents under section 552.130 of the Government Code.

Finally, you raise section 552.147. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.¹ Gov't Code § 552.147. We note that section 552.147 also protects personal privacy. Thus the requestor also has a right to his client's social security number. *Id.* § 552.023(b). Therefore, the department may not withhold the social security number of the requestor's client.

In summary, the department must withhold police report no. 03-194163 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the department may withhold police report no. 09-201231 under section 552.108(a)(1) of the Government Code. The department must release the remaining information.²

¹We note that 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.

²Because in this instance the requestor has a special right of access to a portion of the information at issue, the department must seek another decision from this office if it receives another request for the same information from a different requestor. See Gov't Code §§ 552.301, .302.

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, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/eeg

Ref: ID# 358976

Enc. Submitted documents

c: Requestor
(w/o enclosures)