



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2009

Mr. Ron G. MacFarlane, Jr.
Dealey, Zimmermann, Clark, Malouf & MacFarlane, P.C.
3131 Turtle Creek Boulevard, Suite 1201
Dallas, Texas 75219-5415

OR2009-15833

Dear Mr. MacFarlane:

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# 360914.

The City of Cedar Hill (the "city"), which you represent, received a request for all incident and arrest reports, as well as records of 9-1-1 calls, pertaining to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 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. Section 552.101 encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct 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 Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

- (1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and
- (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). 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). The submitted information consists of law enforcement records relating to a juvenile engaged in delinquent conduct and conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes section 58.007 of the Family Code). Thus, this information is generally confidential under section 58.007(c). In this instance, you acknowledge the requestor is the parent of the juvenile at issue. As such, the city may not withhold the submitted information under section 552.101 in conjunction with section 58.007(c) from this requestor. *Id.* § 58.007(e). You seek to withhold portions of the submitted information under section 58.007(j)(1), which provides that in releasing records pursuant to section 58.007(e), any personally identifiable information concerning

other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). You have marked the identifying information of an individual; however, we note this individual is not a juvenile. Therefore, no portion of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. Additionally, you seek to withhold some information under section 58.007(j)(2), which provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.007(j)(2). Thus, we will address your remaining claims under sections 552.101 and 552.130 of the Government Code. *See id.*

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 Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F 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, but 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.* §§ 411.090-411.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Therefore, any CHRI obtained from DPS or any other criminal justice agency in the remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, information that relates to an individual's current involvement in the criminal justice system is not protected by privacy. *See Gov't Code* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we agree portions of the submitted information, which we have marked, consist of CHRI, and must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. However, none of the remaining information consists of CHRI, and it may not be withheld on such basis.

You have marked a portion of the remaining information under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). We note this exception protects personal privacy. Therefore, because the requestor has a right of access to her own private

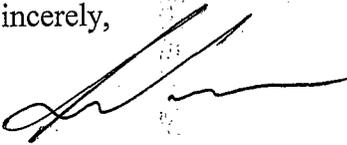
information under section 552.023 of the Government Code, the city may not withhold the requestor's Texas driver's license information under section 552.130. *See id.* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The remaining information must be released to this requestor.¹

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 360914

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because the information being released contains confidential information to which the requestor has a right of access, if the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.