



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2009

Assistant Chief Brett Colston
Waxahachie Police Department
216 North College
Waxahachie, Texas 75165

OR2009-18108

Dear Assistant Chief Colston:

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# 365333.

The Waxahachie Police Department (the "department") received a request from two requestors for information regarding case number 09-01547, including notes written by the responding officer and any report made with the school principal. You state you have provided the requestors with a portion of the requested information. You claim that the submitted 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.

Initially, we note you have not submitted the report made with the school principal. Therefore, to the extent information responsive to this portion of the request existed at the time the department received the request for information, we assume you have released it to the requestors. If you have not released any such information, you must do so at this time. *See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if a governmental body concludes that no exceptions apply to the requested information, it must release information as soon as possible under circumstances).*

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section encompasses information protected by section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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. *See id.* § 51.02(2). Upon review, we find the submitted information involves allegations of juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of section 58.007). Thus, this information is subject to section 58.007. However, we note one of the requestors is the juvenile suspect listed in the report and the other requestor is the parent of that juvenile. Therefore, the requestors may inspect or copy any law enforcement records concerning the juvenile suspect at issue under section 58.007(e). *Id.* § 58.007(e). However, section 58.007(j) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Therefore, because you assert the submitted information is excepted under sections 552.108, 552.130, and 552.147 of the Government Code, we must address whether the information at issue is excepted under these sections.

You specifically raise sections 552.108(a)(2) and 552.108(b)(2) of the Government Code for the submitted information, which provide as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). Sections 552.108(a)(2) and 552.108(b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. *Id.*

A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *Id.* You state that the submitted information relates to a case "that has not resulted in a prosecution, conviction or deferred adjudication." However, you do not assert that the investigation has concluded, but rather you state the information relates to an open and pending investigation. Because you have provided this office with conflicting representations, we find that you have failed to demonstrate the applicability of section 552.108(a)(2) or section 552.108(b)(2) to the submitted information, and it may not be withheld on these bases. *See id.* § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

We note some of the submitted information may be protected by common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To establish the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. 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. We have marked the submitted information that is highly intimate or embarrassing and is not of legitimate public concern. This information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim that some of the remaining submitted information is excepted from disclosure by sections 552.130 and 552.147 of the Government Code. Section 552.130 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. Gov't Code § 552.130(a)(1), (2). 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(a). We note, however, that sections 552.130 and 552.147 protect personal privacy. In this instance, one of the requestors is the minor child whose Texas driver's license number and social security number are at issue, and the other requestor is the parent of the minor child at issue. Thus, the requestors have a right of access to the child's Texas driver's license number and social security number under section 552.023 of the Government Code, and this information may not be withheld from them in this instance. *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 No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). However, the department must withhold the Texas driver's license number that does not belong to the minor child, which we have marked, under section 552.130.²

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the Texas driver's license number we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestors.³

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/dls

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note that the requestors have a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 365333

Enc. Submitted documents

c: Requestors
(w/o enclosures)