



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 7, 2014

Ms. Judy Hickman
Assistant Supervisor
Records Division
City of Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704

OR2014-04005

Dear Ms. Hickman:

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# 515981.

The Beaumont Police Department (the "department") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. You state the submitted information relates to a criminal case that did not result in a conviction or deferred adjudication. However, you also inform us the statute of limitations has not yet run for this case and there could still be a prosecution for this offense. Based on your conflicting representations and our review of the submitted documents, we are unable

¹Although you do not cite to sections 552.101, 552.130, and 552.147 of the Government Code in your brief to this office, we understand you to raise these sections based on the substance of your arguments and your markings.

to determine that the case at issue concluded in a final result other than conviction or deferred adjudication. Therefore, we find that you have failed to demonstrate the applicability of section 552.108(a)(2) to the submitted information, and it may not be withheld on this basis.

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 which provides in relevant 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 58.007(c) is applicable to law enforcement records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007). For purposes of section 58.007(c), "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). Section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. *See id.* § 58.007(c). Upon review, we find the submitted information does not involve a juvenile identified as a suspect, offender, or defendant. Therefore, we find you have failed to demonstrate the applicability of section 58.007 to the submitted information, and it may not be withheld under section 552.101 on this basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To

demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, we note the names, home addresses, and telephone numbers of living members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision Nos. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not invasion of privacy), 455 at 7 (home addresses and telephone numbers not protected under privacy). Upon review, we find none of the submitted information to be highly intimate or embarrassing and not of legitimate public interest; thus, it may not be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the department must withhold the driver's license information we have marked under section 552.130 of the Government Code.²

Section 552.147 of the Government Code. This section provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). Upon review, we find none of the remaining information consists of social security numbers. Accordingly, the department may not withhold any of the remaining information on the basis of section 552.147.

We understand you also raise section 552.101 of the Government Code in conjunction with section 201.806 of the Transportation Code for the remaining information at issue. Section 201.806 provides:

(a) The [Texas Department of Transportation ("TxDOT")] shall:

- (1) tabulate and analyze the vehicle accident reports it receives; and
- (2) annually or more frequently publish statistical information derived from the accident reports as to the number, cause, and location of highway accidents, including information regarding the number of:

²We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e)

(A) accidents involving injury to, death of, or property damage to a bicyclist or pedestrian; and

(B) fatalities caused by a bridge collapse, as defined by Section 550.081.

(b) The [TxDOT] shall provide electronic access to the system containing the accident reports so that the Department of Public Safety can perform its duties, including the duty to make timely entries on driver records.

Transp. Code § 201.806. Section 201.806 pertains to administrative procedures required of TxDOT with regard to accident reports. We note, however, section 201.806 does not make information confidential for the purposes of the Act. *See* Open Records Decision No. 487 at 2 (1987) (confidentiality under statutory predecessor to section 552.101 required express language making certain information confidential or stating information shall not be released to public); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure). Accordingly, none of the information at issue may be withheld under section 552.101 of the Government Code on that basis.

In summary, the department must withhold the driver's license information we have marked under section 552.130 of the Government Code. The remaining information 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division
DKL/bhf

Ref: ID# 515981

Enc. Submitted documents

c: Requestor
(w/o enclosures)