



May 20, 1999

Mr. David M. Berman  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR99-1407

Dear Mr. Berman:

You ask whether certain information is subject to required public disclosure under the chapter 552 of the Government Code. Your request was assigned ID# 125247.

The City of Melissa (the "city") received a request for "documents" related to a specific incident. You seek to withhold the requested information under sections 552.101 and 552.108 of the Government Code.

Section 552.101 requires withholding, *inter alia*, information made confidential by statute. You contend that the requested information is made confidential in its entirety under section 58.007(c) of the Family Code. Section 58.007(c) of the Family Code provides in pertinent part:

(c) Except as provided by Subsection (d) law enforcement records and files concerning a child may not be disclosed to the public and shall be:

- (1) kept separate from adult files and records; and
- (2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The provisions of section 58.007(c) making juvenile law enforcement records confidential took effect on September 1, 1997, and apply only to conduct on or after that date. *See* Acts 1997, 75<sup>th</sup> Leg., R.S., ch.1086, 1997 Tex. Sess. Law Serv. 4179, 4187. Juvenile records of conduct that occurred before January 1, 1996 are governed by the confidentiality provisions of former section 51.14(d) of the Family Code. Juvenile conduct that occurred from January 1, 1996 to August 31, 1997 is not covered by any confidentiality provision. *See* Open Records Decision No. 644 (1996). The juvenile conduct to which the records requested here relate occurred in August of 1996. Neither the current section 58.007(c) of the Family Code nor its predecessor, section 51.14(d), protects these records.

Section 552.108 of the Government Code excepts from required public disclosure

(a) Information 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;

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

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(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 . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(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; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You advise that at this time “all of the cases [to which the requested records relate] have been disposed of.” You have not, in our opinion, established that release of the requested records would interfere with law enforcement or how the records would otherwise fall within the protection of section 552.108. You may not withhold the requested records under section 552.108.

Section 552.101 also requires withholding information made confidential by judicial decision, including information protected by common-law privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. In our opinion, there is a legitimate public interest in the requested information such that it is not protected by common-law privacy.

We note, however, that the records you submitted contain information which must be withheld under section 552.130, which provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We have marked the kinds of information in the submitted information which must be withheld under section 552.130.

The records at issue also contain social security numbers. This office concluded in Open Records Decision No. 622 (1994) that amendments to the federal Social Security Act, title 42, U.S.C., section 405(c)(2)(C)(vii), make confidential any social security number obtained or maintained by any “authorized person” pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure.

It is not apparent to us that the social security numbers at issue here were obtained or are maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are therefore confidential under section

405(c)(2)(C)(vii). We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the city should ensure that the numbers were not obtained or maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990. By way of example, we have marked some social security numbers in the submitted records.

Finally, we note that you included in the submitted information a video tape, but ask whether the video tape is responsive to the request here, which asks for "documents." Since you submitted the video tape, we have reviewed it. Please note that the video tape also contains license plate information which, under section 552.130 (*see discussion supra*), must be edited out prior to release. We do not attempt to determine, however, whether the requestor was also seeking video tape records in his request for "documents." You should clarify this matter with the requestor.

Except as noted herein, you must release the requested information. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/eaf

Ref: ID# 125247

encl. Marked documents

cc: Ms. Brooks Egerton  
Reporter  
The Dallas Morning News  
Communications Center  
P.O. Box 655237  
Dallas, Texas 75265  
(w/o enclosures)