



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 3, 2003

Mr. Loren B. Smith
Olson & Olson
3 Allen Center, Suite 3485
333 Clay Street
Houston, Texas 77002

OR2003-1307

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177288.

The City of Friendswood (the "city"), which you represent, received a request for "any record of citations, offenses, misdemeanors, arrests, and tickets for [a specified person]." You claim that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that Exhibits B through F are excepted from disclosure pursuant to section 552.101 in conjunction with section 58.007(c) of the Family Code.¹ Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007(c) provides:

(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 Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. See Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

- (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.

Fam. Code § 58.007(c).

Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). This office previously concluded that section 58.007, as enacted by the Seventy-fourth Legislature, did not make confidential juvenile law enforcement records relating to conduct that occurred on or after January 1, 1996. *See* Open Records Decision No. 644 (1996). The Seventy-fifth Legislature, however, amended section 58.007 to once again make juvenile law enforcement records confidential effective September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187 (Vernon). The legislature chose not to make this most recent amendment retroactive in application. Consequently, law enforcement records pertaining to juvenile conduct that occurred between January 1, 1996 and September 1, 1997, are not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007 of the Family Code.

Exhibit D and case number 1-90-003132-001 in Exhibit F constitute juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. Thus, this information, which we have marked, is excepted from disclosure pursuant to section 552.101 in conjunction with former section 51.14(d) of the Family Code. However, we note that a "child" is defined in the Family Code as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Exhibits B, C, and E, as well as the remaining portions of Exhibit F, do not concern persons as suspects or arrestees who were ten years of age or older and under seventeen years of age at the time that the alleged offenses were committed. Therefore, we find that this particular information does not concern juvenile conduct that is encompassed by section 58.007. Accordingly, we conclude that the city may not withhold any portion of this particular information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

You also claim that the remaining portions of Exhibit F are excepted from disclosure pursuant to section 552.101 in conjunction with section 58.106 of the Family Code. Section 58.106 deems confidential information contained in the juvenile justice information system. Section 58.104 of the Family Code provides that the juvenile justice information system shall consist of information relating to certain delinquent conduct committed by a juvenile offender that would constitute a criminal offense. *See* Fam. Code § 58.104(a). As noted above, the remaining portions of Exhibit F do not concern persons as suspects or arrestees who were ten years of age or older and under seventeen years of age at the time that the alleged offenses were committed. Therefore, we conclude that the city may not withhold any portion of this information under section 552.101 of the Government Code in conjunction with section 58.106 of the Family Code.

In addition, you claim that Exhibits A through C and E are excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or a deferred adjudication. You state that Exhibits A through C and E pertain to cases that were closed and did not result in convictions or deferred adjudications. We understand from these representations that these cases have concluded in final results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to Exhibits A through C and E.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Accordingly, with the exception of basic information that must be released to the requestor, we conclude that the city may withhold Exhibits A through C and E pursuant to section 552.108(a)(2) of the Government Code.

We note that portions of case number 1-95-000469-001 in Exhibit F are subject to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure 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. *See* Gov't Code § 552.130. Accordingly, we conclude that the city must withhold the Texas driver's license numbers that we have marked in this case number pursuant to section 552.130 of the Government Code.

In summary, the city must withhold Exhibit D and case number 1-90-003132-001 in Exhibit F pursuant to section 552.101 in conjunction with former section 51.14(d) of the Family Code. With the exception of basic information that must be released to the requestor, the city may withhold Exhibits A through C and E pursuant to section 552.108(a)(2) of the

Government Code. The city must withhold the Texas driver's license numbers that we have marked in case number 1-95-000469-001 in Exhibit F pursuant to section 552.130 of the Government Code. The city must release to the requestor the remaining portions of this particular case number, as well as the entirety of case numbers 1-96-000118-002 and 1-92-009837-001 in Exhibit F.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 177288

Enc. Marked documents

c: Mr. Jeremy Christopher Goodwin
230 Greenbriar Drive
West Chester, PA 19382
(w/o enclosures)