



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 8, 2003

Mr. Paul F. Wieneskie
Cribbs & McFarland, P.C.
P.O. Box 13060
Arlington, Texas 76094-0060

OR2003-1426A

Dear Mr. Wieneskie:

This office issued Open Records Letter No. 2003-1426 on March 5, 2003. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on March 5, 2003. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act).

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177446.

The Euless Police Department (the "department"), which you represent, received a request for the offense report pertaining to the arrest of the requestor in February, 1997. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides in pertinent part 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 Subchapter B.

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. 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 of the Family Code, 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. 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. 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.

Upon review, we find that the offense report at issue pertains to juvenile conduct that occurred between January 1, 1996 and September 1, 1997. Consequently, the responsive offense report is not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007 of the Family Code. We therefore determine that the offense report may not be withheld pursuant to section 552.101 in conjunction with either of these provisions.

We note that the submitted offense report contains the requestor's social security number. A social security number may be withheld in some circumstances under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social

Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994) (social security numbers and related records obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990 are confidential pursuant to federal law). However, the requestor in this instance has a special right of access to his social security number pursuant to section 552.023 of the Government Code. Gov't Code § 552.023; *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual asks governmental body to provide him with information concerning himself). Accordingly, the department may not withhold the social security number in the submitted offense report.

The offense report also contains the requestor's Texas driver's license number and a license plate number. Motor vehicle license and registration information issued by an agency of this state are generally excepted from disclosure pursuant to section 552.130 of the Government Code. Gov't Code § 552.130. In this case, the requestor has a special right of access to his driver's license number under section 552.023. *See* Gov't Code § 552.023. However, we are unable to determine from the information provided whether the license plate number in the offense report relates to the requestor's vehicle. If the department determines that the vehicle at issue belongs to the requestor, then the requestor has a special right of access to the license plate number under section 552.023. *Id.* Otherwise, the license plate number is excepted from disclosure under section 552.130 of the Government Code.

Finally, we note that the department has redacted an account number contained in the submitted documents. Section 552.136 of the Government Code provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

We are unable to determine whether the account number, which you have marked, belongs to the requestor or a third party. If the department determines that the account number belongs to a third party, the account number must be withheld pursuant to section 552.136 of the Government Code. If the account number belongs to the requestor, the department

must release the account number to the requestor pursuant to the requestor's right of access under section 552.023 of the Government Code. *See* Open Records Decision No. 481 (1987). We conclude that the remainder of the submitted offense report must be released to the requestor.

In summary, if the department determines that the license plate number in the offense report relates to a vehicle that belongs to a third party other than the requestor, the license plate number must be withheld under section 552.130 of the Government Code. If the vehicle belongs to the requestor, the license plate number must be released pursuant to section 552.023 of the Government Code. If the department determines that the marked account number belongs to a third party other than the requestor, the account number must be withheld under section 552.136 of the Government Code. If the account number belongs to the requestor, it must be released pursuant to section 552.023 of the Government Code. The remainder of the submitted offense report must be released to the requestor in its entirety. Because portions of the information at issue may be confidential with respect to the general public, if the department receives a request for this information from an individual other than the requestor or his authorized representative, the department should again seek our decision.

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 177446

c: Mr. William Lovelace
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Grapevine, Texas 76091