



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2004

Ms. Denise Reynolds
Records Clerk
Crowley Police Department
P.O. Drawer 747
Crowley, Texas 76036

OR2004-6610

Dear Ms. Reynolds:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206521.

The Crowley Police Department (the "department") received a request for (1) all arrest reports between March 25, 2004 and May 20, 2003 with "the required information redacted," and (2) certain information about "any new-hires of police personnel in recent weeks[.]" You claim that the submitted 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.

Initially, we note that you only submitted three offense reports for our review. We therefore assume that to the extent any additional responsive information existed on the date the department received this request, it has been released to the requestor. If not, the department must release any such information at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We now turn to your claimed exception. 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 other statutes make confidential. Section 58.007 of the Family Code provides in 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 Subchapter B.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Information relating to juvenile crime victims is not made confidential by section 58.007. *See* Open Records Decision No. 628 at 6 (1994) (predecessor statute). Report numbers 40254 and 40332 involve juvenile suspects. Thus, these reports are subject to section 58.007, and it does not appear that any of the exceptions in section 58.007 apply. Therefore, report numbers 40254 and 40332 are confidential under section 58.007(c) of the Family Code and must be withheld pursuant to section 552.101 of the Government Code.

Report number 40338 does not involve a juvenile suspect or offender. This report, therefore, may not be withheld under section 552.101 in conjunction with section 58.007 of the Family Code. Certain information within report number 40338, however, is confidential and must be withheld from disclosure.

First, we note that you have redacted from report number 40338 information for which the department has not been granted a previous determination. *See* Open Records Decision No. 673 (2001) (setting forth circumstances under which governmental body may rely on ruling from this office as previous determination for purposes of section 552.301(a) of Government Code). Section 552.301 of the Government Code requires the governmental body to submit the requested information to this office in a manner that permits us to decide whether the information is excepted from disclosure. In general, redacting information may make it difficult or impossible for this office to review those portions of the documents and may result in a failure to request a decision in the manner prescribed by section 552.301 of the Government Code. In the future, failure to comply completely with section 552.301 may result in a decision that the requested information is public and must be released in its entirety. *See* Gov't Code §§ 552.006, .301(e), .302. In this instance, however, because we

are able to ascertain the type of information that has been redacted and because this information may be confidential by law, we will address this redacted information. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (presumption that information is public and must be released can be overcome by compelling interest to withhold information); *see also* Open Records Decision No. 150 at 2 (1977) (compelling interest is normally that some other source of law makes information confidential or that third party interests are at stake).

Section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state, a motor vehicle title or registration issued by an agency of this state, or a personal identification document issued by an agency of this state or authorized local agency. *See* Gov't Code § 552.130. Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.

Report number 40338 also contains social security numbers. Social security numbers must be withheld in some circumstances under section 552.101 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). These amendments make confidential social security numbers and related records that are 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. *See id.* We have no basis for concluding that any social security number within the submitted documents is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act (the "Act") on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the department should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, report numbers 40254 and 40332 are confidential under section 58.007(c) of the Family Code and must be withheld pursuant to section 552.101 of the Government Code. Except for the information we have marked pursuant to section 552.130, and the social security numbers which may be confidential under federal law, report number 40338 must be released.

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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/sdk

Ref: ID# 206521

Enc. Submitted documents

c: Ms. Joy E. Cressler
Crowley Star Newspaper
319 North Burleson Boulevard
Burleson, Texas 76028
(w/o enclosures)