



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 23, 2005

Mr. Kevin D. Pagan
Deputy City Attorney
City of McAllen
P. O. Box 220
McAllen, Texas 78505

OR2005-01587

Dear Mr. Pagan:

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# 219253.

The City of McAllen (the "city") received a request for all police and traffic offense records regarding four named individuals. The city sought clarification of the request from the requestor, and you have submitted a copy of the requestor's written response. *See* Gov't Code § 552.222 (if scope of information requested unclear to governmental body, governmental body may ask requestor to clarify request; if large amount of information requested, governmental body may discuss with requestor how scope of request might be narrowed; but governmental body may not inquire into purpose for which information will be used); *see also* Open Records Decision No. 663 at 5 (1999)(discussing requests for clarification). You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you did not submit information responsive to the request related to two of the named individuals. We assume the city has released this information to the requestor. If it has not, it must do so at this time to the extent that such information exists. *See* Gov't Code §§ 552.301(a), .302. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information.

Next, we observe that the requestor excluded driver's license and social security numbers, personal e-mail addresses, telephone numbers, and addresses from the request. Thus, such

information is not responsive to the present request and this ruling will not address that information.

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. 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 has concluded that section 58.007 of the Family Code, as enacted by the Seventy-fourth Legislature, does 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). It 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.

Some of the records at issue concern juvenile conduct that occurred prior to January 1, 1996. Therefore, these records, which we have marked, are confidential under the former section 51.14(d) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code.

We next address your section 552.108 claim for the remaining submitted information. Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

(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 is excepted from the requirements of Section 552.021 if:

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

Gov't Code § 552.108(a)(1), (b)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining submitted information relates to an "ongoing" criminal investigation. Based upon this representation, we conclude that release of the information that we have marked would interfere with the investigation of crime. See *Houston Chronicle Publ'g Co. 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) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to the information that we have marked.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. See *Houston Chronicle*, 531 S.W.2d at 185; Open Records Decision No. 127 (1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the information that we have marked from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

As for the remaining reports, the city also asserts they relate to an ongoing investigation and that their release would interfere with the detection, investigation, or prosecution of these matters. We note, however, that the remaining reports involve incidents that occurred more than three years prior to the city's receipt of the instant request for information. The longest possible statute of limitations for any of the offenses described in these reports is five years, while for most the limitation period is three years. See *Crim. Proc. Code art. 12.01(6)* (providing limitation period of three years for any felony offense not listed in subsections one through five). You have neither informed this office that any criminal charges were filed within the limitations period nor have you otherwise explained how or why release of this information would interfere with the investigation of an offense for which the statute of limitations has run. Thus, because you have not shown the applicability of section 552.108, we conclude that you may not withhold the remaining reports on this basis.

Although not excepted from disclosure under section 552.108, we note that section 552.130 of the Government Code is applicable to some of the submitted information.¹

¹The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, we have marked the vehicle identification and license plate numbers that the city must withhold pursuant to section 552.130.

To summarize: (1) the records that we have marked are confidential under the former section 51.14(d) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code; (2) except for basic information that must be released, the city may withhold the information that we have marked under section 552.108; (3) we have marked the vehicle identification and license plate numbers that the city must withhold pursuant to section 552.130; and (4) the remaining submitted information must be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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,

A handwritten signature in cursive script, appearing to read "Cary Grace". The signature is written in black ink and is positioned above the typed name.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/CN/krl

Ref: ID# 219253

Enc. Submitted documents

c: Ms. Patsy M. Rogers
CBS-McAllen
8506 Chivalry
San Antonio, Texas 78254
(w/o enclosures)