



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2005

Ms. Dorothy Brooks
City Secretary
City of Rockwall
385 South Goliad
Rockwall, Texas 75087

OR2005-02995

Dear Ms. Brooks:

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# 221561.

The City of Rockwall (the "city") received a request for all police reports from two specified addresses from September 11, 2002 to the present involving the requestor and four named individuals. You state that some of the requested information has been provided to the requestor. However, you claim that the remaining requested information is excepted from disclosure pursuant to sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions 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." Gov't Code § 552.101. This section encompasses information made confidential by statute. 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. The relevant language of section 58.007(c) reads 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.

Fam. Code § 58.007(c). We have reviewed the submitted information and agree that some of the reports involve allegations of delinquent conduct and conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (providing that in title 3 of Family Code, “child” means person who is ten years of age or older and under seventeen years of age), 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). Thus, the reports we have marked are subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, these reports are confidential in their entireties in accordance with section 58.007(c) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code. However, you do not demonstrate, nor does it appear from our review, that incident report numbers 2004-00003348, 2004-00004026, 2004-00006790, 2004-00006786, 2003-00014154, and 2004-00006982, involve an allegation that a juvenile violated a penal statute or otherwise engaged in delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03. Thus, this information is not confidential under section 58.007 and may not be withheld under section 552.101 on that basis.

Section 552.108(a)(1) excepts from disclosure “[i]nformation 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.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the incident report numbers 2004-00011049 and 2004-00006794 relate to pending criminal investigations. Based on this representation, we conclude that release of these incident reports would interfere with the detection, investigation, or prosecution 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).

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 Open Records Decision No. 127* (1976) (listing basic information that must be released from offense report in accordance

with *Houston Chronicle*). With the exception of basic information that must be released, the city may withhold incident report numbers 2004-00011049 and 2004-00006794 from disclosure pursuant to section 552.108(a)(1).

You claim that a portion of the remaining submitted information is excepted from disclosure pursuant to section 552.130 of the Government Code. This section excepts from disclosure information 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 pursuant to section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked pursuant to section 552.101 in conjunction with section 58.007 of the Government Code. With the exception of basic information that must be released, the city may withhold incident report numbers 2004-00011049 and 2004-00006794 from disclosure pursuant to section 552.108(a)(1). The city must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.¹ As our ruling is dispositive we do not address your remaining arguments.

Finally, you request that this office issue a "previous determination" that would permit the city in the future to withhold from disclosure juvenile offender records, social security numbers, and driver's license numbers without the need of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time. Accordingly, 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.

¹ We note that the records to be released contain information relating to an individual that would be excepted from disclosure to the general public under laws and exceptions designed to protect privacy. However, the requestor has a special right of access to this information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). If the city receives a future request for this information from an individual who would not have a right of access, the city should again seek our decision.

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); *Tex. 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 221561

Enc. Submitted documents

c: Ms. Veronica Kumpf
203 Rockbrook Drive
Rockwall, Texas 75087
(w/o enclosures)