



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2005

Mr. John T. Patterson
Assistant City Attorney
City of Waco
P. O. Box 2570
Waco, Texas 76702-2570

OR2005-10292

Dear Mr. Patterson:

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# 236349.

The Waco Police Department (the "department") received a request for all police reports and other information related to a certain address. You state that you will release basic information from the responsive reports and the unredacted information in Exhibit 31, but claim that the remaining submitted information is excepted from disclosure under 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." This section encompasses information protected by other statutes. 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.

Fam. Code § 58.007(c). Section 51.02(2)(A) defines “child” as a person who is ten years of age or older and under seventeen years of age. Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. The department claims that the police report labeled Exhibit 13 is confidential under section 58.007. Although the complainant alleges that the suspect is a juvenile, the report reflects that the suspect’s age and identity are unknown. Because the juvenile’s age and identity are unknown, you have failed to demonstrate the applicability of section 58.007. Accordingly, Exhibit 13 may not be withheld under section 552.101.

The department also claims that Exhibits 4-30 are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) 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.” 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 explain that the offense reports in Exhibits 4-30 pertain to pending investigations. Based on your representations and our review, we find that the release of the highlighted information in Exhibits 5, 17, and 19 through 29 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). Accordingly, we agree that section 552.108(a)(1) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Since you state that you will release basic information, we conclude that the department may withhold the remaining portions of Exhibits 5, 17, and 19 through 29 from disclosure based on section 552.108(a)(1) We note that you have the discretion to release all or part of these exhibits that is not otherwise confidential by law. Gov’t Code § 552.007.

With respect to Exhibits 4, 6 through 16, and 18, we note that the statute of limitations for the offenses listed in the reports has expired. *See* Penal Code §§ 30.04(d) (burglary of vehicle is a misdemeanor), 31.03(e)(2)(A) (theft of property valued \$50 or more but less than \$500 is a misdemeanor), Crim. Proc. Code art. 12.02 (indictment or information for misdemeanor offense may be presented within two years from date of commission of offense, and not afterward). You do not explain how these exhibits pertain to pending cases, nor have you shown how release of these exhibits would otherwise interfere with the detection, investigation, or prosecution of crime. As such, we find you have failed to reasonably explain how section 552.108 is applicable to Exhibits 4, 6 through 16, and 18, and the department may not withhold these exhibits on that basis.

However, the department claims that personal financial information in Exhibits 12 and 31 is excepted from disclosure under the doctrine of common law privacy. Section 552.101 also encompasses the common law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). However, you have failed to explain how the information that you have marked is personal financial information protected under common law privacy. Thus, this information must be released. We note that Exhibit 12 contains medical information. This office has found that some kinds of medical information is protected by common law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the medical information in Exhibit 12 that is subject to common law privacy and excepted from disclosure under section 552.101.

The department also claims that Texas motor vehicle record information contained in Exhibits 4, 6 through 16, and 18 is excepted from disclosure. Section 552.130 of the Government Code 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.” Gov’t Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information we have marked, in addition to the information you have marked.

Finally, the submitted information contains social security numbers. Section 552.147 of the Government Code¹ provides that “[t]he social security number of a living person is excepted

¹Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov’t Code § 552.147).

from” required public disclosure under the Act. Therefore, the department must withhold the social security numbers in Exhibits 4, 6 through 16, and 18 that we have marked, in addition to the numbers you have marked, under section 552.147.²

In summary, the highlighted information in Exhibits 5, 17, 19, and 20 through 29 may be withheld pursuant to section 552.108. We have marked the medical information in Exhibit 12 that is subject to common law privacy and excepted from disclosure under section 552.101. The department must withhold all of the marked Texas motor vehicle record information in Exhibits 4, 6 through 16, and 18. The department must withhold the social security numbers in Exhibits 4, 6 through 16, and 18. The remaining information 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, 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

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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 Office of the Attorney General 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. 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 black ink, appearing to read 'José Vela III', with a stylized flourish at the end.

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 236349

Enc. Submitted documents

c: Jonathan Woods
1421 S. 12th Street, Apt. 212
Waco, Texas 76706
(w/o enclosures)