



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2009

Ms. Cara Leahy White
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2009-03231

Dear Ms. White:

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# 337664 (File No. SL-2008-025).

The City of Southlake (the "city") received seven requests for (1) all reports related to the investigation of a named individual for burglary and robbery, (2) the arrest warrant for the named individual for robbery, (3) the arrest warrant affidavits for the named individual for burglary and robbery, and (4) any video surveillance tapes from the investigations for burglary and robbery involving the named individual. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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. Section 552.101 encompasses section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Open Records Decision No. 680 at 4 (2004); *see also* Fam. Code § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Section 58.007 provides in relevant 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, D, and E.

Fam. Code § 58.007(c). In order for section 58.007 to apply, a child must be identified in the information at issue as a suspect or offender. *See id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). In this instance, the submitted information pertains to investigations which identify only an adult as a suspect. You have failed to explain how this information pertains to juvenile delinquent conduct or conduct indicating a need for supervision as those terms are defined by the Family Code. Thus, section 58.007 of the Family Code is not applicable to the submitted information, and none of it may be withheld on that basis.

Next, you claim section 552.130 for portions of the submitted information. This section provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, Texas driver’s license information that pertains to a deceased individual may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). A portion of the Texas driver’s license information you have marked pertains to a deceased individual. Therefore, the city may not withhold that information under section 552.130 of the Government Code. However, the city must withhold the Texas driver’s license numbers and Texas motor vehicle record information of living individuals we have marked in the submitted information under section 552.130 of the Government Code.

Next, the city asserts section 552.136 for credit card and gift card numbers in the submitted information. Section 552.136 states “[n]otwithstanding 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.” Gov’t Code § 552.136. An access device number is one that 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.” *Id.* We note, however, the purpose of section 552.136 is to protect the privacy interests of individuals, and because the right of privacy lapses at death, the account numbers of a deceased individual may not be withheld under section 552.136. *Moore*, 589 S.W.2d at 489. We are unable to determine if a living individual has an interest in the credit card account number or insurance policy number of the deceased individual. Therefore, we will rule conditionally. If the credit card numbers or insurance policy number we have marked pertain solely to the accounts or policy of a deceased individual they are not excepted from disclosure under section 552.136 and must be released. However, if the marked account numbers or policy number pertain to accounts or a policy in which a living person has an interest, they must be withheld under section 552.136 of the Government Code. In addition, the city must withhold the gift card numbers we marked. However, some of the gift cards do not have a balance on them and were discarded by the vendors. Thus, such numbers are not access device numbers because they can no longer be used to obtain goods.

The city asserts portions of the submitted information are excepted under section 552.137. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). We note section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. You have marked an e-mail address maintained by a governmental body for its employee. The city may not withhold this e-mail address under section 552.137 of the Government Code. The city must only withhold the e-mail address we marked under section 552.137, unless the owner of the address consented to its release.

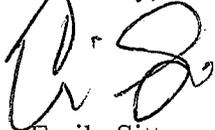
Finally, we note some of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the city must withhold the Texas driver's license numbers and Texas motor vehicle record information of living individuals we have marked under section 552.130 of the Government Code. To the extent a living person has an interest in them, the city must withhold the credit card numbers and insurance policy number we have marked under section 552.136 of the Government Code. In addition, the city must withhold the gift card numbers we marked under section 552.136. The city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the individual whose e-mail address is at issue consented to its release. The remaining submitted information must be released to the requestors, but any copyrighted information may only be released in accordance with copyright law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/eeg

Ref: ID# 337664

Enc. Submitted documents

c: Requestor (6)
(w/o enclosures)