



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-09256

Dear Mr. Phillips:

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# 347919 (Ft. Worth PIR #3127-09).

The Fort Worth Police Department (the "department") received a request for several specified incident reports pertaining to a named individual. You state you have redacted certain Texas motor vehicle record information relating to an individual other than the requestor under section 552.130 of the Government Code pursuant to previous determinations issued to the City of Fort Worth in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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 exception encompasses information made confidential by statute.

¹Section 552.147(b) of the Government Code authorizes a government 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.

Section 58.007 of the Family Code makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. 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). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Some of the submitted information pertains to juvenile delinquent conduct that occurred after September 1, 1997. Upon review of your arguments and the submitted information, we conclude report number 99324548 is generally confidential pursuant to section 58.007(c) of the Family Code.

Section 58.007(e) of the Family Code provides, however, that "[l]aw enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101 [of the Family Code] [or] a criminal justice agency as that term is defined by Section 411.082, Government Code[.]" *Id.* § 58.007(e). Section 58.101 of the Family Code provides that "'juvenile justice agency' means an agency that has custody or control over juvenile offenders." *Id.* § 58.101(5). Section 411.082 of the Government Code defines a "criminal justice agency" as including "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice" and "a nongovernmental railroad or campus police department that has obtained an originating agency identifier from the Federal Bureau of Investigation." Gov't Code § 411.082(3)(A)-(B).

In this instance, the requestor identifies herself as a U.S. Probation Officer for the United States District Court for the Northern District of Texas. She states that the requested information involves an individual who is under investigation by the U.S. Probation Office.

You do not indicate, and we are not otherwise able to determine, whether the requestor seeks access to the submitted information on behalf of a juvenile justice agency or a criminal justice agency for the purposes of section 58.007(e) of the Family Code. Nevertheless, if the department is able to determine that this particular requestor represents a juvenile justice agency or a criminal justice agency, as provided by section 58.007(e) of the Family Code, then the requestor has a right to inspect report number 99324548 under section 58.007(e) of the Family Code. Otherwise, the requestor has no right to inspect report number 99324548, and it must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code as information made confidential by law. We note that a release of information made confidential by section 58.007(c) under the authority of section 58.007(e) would not constitute a disclosure of confidential information to the public for the purposes of section 552.352 of the Government Code or a selective disclosure of information to the public for the purposes of section 552.007. *See* Open Records Decision Nos. 680 at 7-8 (2003), 655 at 8-9 (1997); *compare* Attorney General Opinion DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized, and receiving agency is not among statute's enumerated entities).

You state that a portion of report number 96745287 is subject to a court order of restricted access. You indicate the order was entered in accordance with section 58.203 of the Family Code, which states the Texas Department of Public Safety shall certify that juvenile law enforcement records are subject to automatic restriction under certain circumstances. Fam. Code § 58.203. Section 58.204(b) provides:

(b) On certification of records in a case under Section 58.203, the [Texas Department of Public Safety] may permit access to the information in the juvenile justice information system relating to the case of an individual only:

- (1) by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code; or
- (2) for research purposes, by the Texas Juvenile Probation Commission, the Texas Youth Commission, or the Criminal Justice Policy Council.

Id. § 58.204(b). Furthermore, section 58.207 of the Family Code provides in relevant part:

(a) On certification of records in a case under Section 58.203, the juvenile court shall order:

- (1) that the following records to the case may be accessed only as provided by Section 58.204(b):

...

(E) records maintained by a law enforcement agency[.]

...

(b) On receipt of an order under Subsection (a)(1), the agency maintaining the records:

(1) may allow access only as provided by Section 58.204(b); and

(2) shall respond to a request for information about the records by stating that the records do not exist.

Id. § 58.207(a)(1)(E), (b). As noted above, we are not able to determine whether the requestor seeks access to the submitted information on behalf of a criminal justice agency for the purposes of section 58.204(b) of the Family Code. Accordingly, if the department is able to determine that this particular requestor represents a criminal justice agency, as provided by section 58.204(b) of the Family Code, then the requestor also has a right of access to the information you have marked under section 58.204 of the Family Code. Otherwise, the requestor has no right of access to this information, and in accordance with the submitted order of restricted access and section 58.207(b), we find that the department must respond to the request by stating that the records you have marked under section 58.204 of the Family Code do not exist.

You claim that a portion of the remaining information is excepted from disclosure under section 552.136 of the Government Code. Section 552.136 states that “[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. Accordingly, the department must withhold the bank account number you have marked under section 552.136.

In summary, if the department is able to determine that this particular requestor represents a juvenile justice agency or a criminal justice agency, as provided by section 58.007(e) of the Family Code, then the requestor has a right to inspect report number 99324548 under section 58.007(e) of the Family Code. Otherwise, the requestor has no right to inspect report number 99324548, and it must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code as information made confidential by law. Next, if the department is able to determine that this particular requestor represents a criminal justice agency, as provided by section 58.204(b) of the Family Code, then the requestor also has a right of access to the information you have marked under section 58.204 of the Family Code. Otherwise, the requestor has no right of access to this information, and in accordance with the submitted order of restricted access and

section 58.207(b), we find that the department must respond to the request by stating that the records you have marked under section 58.204 of the Family Code do not exist. The department must withhold the information you have marked under section 552.136 of the Government Code. The remaining information must be released.

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,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#347919

Enc. Submitted documents

c: Requestor
(w/o enclosures)