



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2009

Mr. Matthew C.G. Boyle
Boyle & Lowry, L.L.P.
42201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2009-10382

Dear Mr. Boyle:

~~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# 350185.~~

The Bedford Police Department (the "department"), which you represent, received a request for all reports related to the requestor. You state that some responsive information has been released to the requestor. You claim that the 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 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. Section 552.101 of the Government Code encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. You assert that the submitted information in Exhibit C is subject to this section. We note, however, that section 58.007 is inapplicable because the conduct in the information at issue occurred in 1991. Former section 51.14 of the Family Code is the applicable provision in this instance. Prior to its repeal by the Seventy-Fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. *See* Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to juvenile conduct occurring before January 1, 1996 are governed by 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. Section 51.14 only applies to records of a "child," which is defined as a

person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2).

In this instance, Exhibit C involves juvenile delinquent conduct that occurred in 1991. Therefore, Exhibit C is confidential under former section 51.14 of the Family Code and must be withheld under section 552.101 of the Government Code. *See id.* § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by child).

You assert that the information in Exhibits A and B is excepted from public disclosure under section 552.108 of the Government Code. 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 [required public disclosure] if:

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

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

(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 [required public disclosure] if:

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

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (b)(1), (a)(2), (b)(2). Sections 552.108(a)(1) and 552.108(a)(2) are mutually exclusive, as are sections 552.108(b)(1) and 552.108(b)(2). 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 id.* §§ 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 information submitted in Exhibit A is related to inactive but still pending investigations. Upon review and based on your representation, we conclude that release of

some of this information 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 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 we have marked in Exhibit A.

However, we note that the statutes of limitations for report numbers 2006-00018386, 1995-00041044, and 92053841 have expired. *See* Crim. Proc. Code art. 12.01 (listing time limits for presentation of felony indictments), .02 (indictment or information for misdemeanor offense may be presented within two years from date of commission of offense, and not afterward). You have not informed this office that any criminal charges were filed within the limitations period in these cases. Furthermore, you have not otherwise explained how release of these reports would interfere with the detection, investigation, or prosecution of crime. Thus, report numbers 2006-00018386, 1995-00041044, and 92053841 may not be withheld under section 552.108(a)(1) or section 552.108(b)(1).

Sections 552.108(a)(2) and 552.108(b)(2) except from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming sections 552.108(a)(2) and 552.108(b)(2) must demonstrate that the requested information relates to a criminal matter that has concluded in a final result other than a conviction or deferred adjudication. You state that the reports in Exhibit B each relate to cases which concluded with a result other than conviction or deferred adjudication. Based on this representation, we conclude that section 552.108(a)(2) is applicable to these reports.

You also seek to withhold report numbers 2006-00018386, 1995-00041044, and 92053841 under sections 552.108(a)(2) and 552.108(b)(2), which as previously stated, are applicable only to concluded criminal investigations that did not result in conviction or deferred adjudication. You state, however, that these reports pertain to pending criminal investigations. Because you have provided this office with contradictory assertions, we find that you have failed to sufficiently demonstrate the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). We therefore conclude that the department may not withhold report numbers 2006-00018386, 1995-00041044, and 92053841 under section 552.108(a)(2) or section 552.108(b)(2) of the Government Code.

We note that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d 186-7, Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, which must be released, Exhibit B and the information we have marked in Exhibit A may be withheld under section 552.108 of the Government Code.

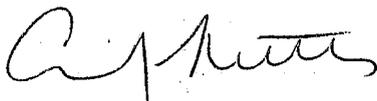
You claim that some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. Because this exception protects personal privacy, the requestor has a right of access to his own Texas motor vehicle record information under section 552.023 of the Government Code, and the department may not withhold this information from the requestor under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

In summary, Exhibit C is confidential under former section 51.14 of the Family Code and must be withheld under section 552.101 of the Government Code. With the exception of basic information, Exhibit B and the information we have marked in Exhibit A may be withheld under section 552.108 of the Government Code. Basic information and report numbers 2006-00018386, 1995-00041044, and 92053841 must be released.¹

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

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¹We note that the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023(a) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 350185

Enc. Submitted documents

c: Requestor
(w/o enclosures)