



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2009

Mr. Joseph J. Gorfida, Jr.
Assitant City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2009-12555

Dear Mr. Gorfida:

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# 354370 (RPD ID No. 09-439).

The Richardson Police Department (the "department") received a request for information related to two specified cases. You state you have released some of the responsive information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.147 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 encompasses information protected by other statutes, 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. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. Fam. Code § 51.02(2) ("child" means a person who is ten years of age or older and under seventeen years of age). The relevant language of section 58.007 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 Subchapters B, D, and E.

...

(e) Law 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, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). We have reviewed incident report number 07-052636 and find it involves allegations of juvenile conduct in violation of penal statutes that occurred after September 1, 1997. Thus, this information is subject to section 58.007. You inform us, however, that the requestor is the parent of the juvenile offender. Under section 58.007(e), the requestor may inspect or copy law enforcement records concerning his child. *Id.* § 58.007(e). As you acknowledge, section 58.007(j)(1) requires the redaction of any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses. *Id.* § 58.007(j)(1). For the purposes of section 58.007(j), a juvenile victim or witness is a person who is under eighteen years of age. Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1). Furthermore, because you assert portions of the remaining information are excepted under section 552.101 of the Government Code in conjunction with common-law privacy and sections 552.130 and 552.147 of the Government Code, we must address whether the remaining information is excepted under those sections. *See id.* § 58.007(j)(2).

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also found 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). In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find release of the remaining information you have marked does not implicate the privacy interest of the individual at issue, as the individual's identity is being withheld. Accordingly, the remaining information you have marked may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 excepts from disclosure information related 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(a)(1), (2). Therefore, the department must withhold the Texas motor vehicle record information we have marked in the remaining information pursuant to section 552.130 of the Government Code. However, the remaining information you have marked does not consist of Texas motor vehicle record information. It is therefore not subject to section 552.130 of the Government Code and may not be withheld on that basis.

You have marked social security numbers pursuant to section 552.147 of the Government Code, which provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act.¹ Gov't Code § 552.147(a). We note section 552.147 is based on privacy. Thus, the requestor in this instance has a right of access to his child's social security number pursuant to section 552.023 of the Government Code. *See generally* 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

¹We 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.

information is considered confidential by privacy principles). Therefore, the department may not withhold the requestor's child's social security number pursuant to section 552.147(b). However, the department may withhold the social security numbers we have marked under section 552.147.

In summary, the marked information that identifies juvenile witnesses must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The information we have marked must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The Texas motor vehicle record information we have marked must be withheld under section 552.130 of the Government Code. The social security numbers we have marked may be withheld under section 552.147 of the Government Code. The remaining submitted 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, toll free, at (888) 672-6787.

Sincerely,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/jb

Ref: ID# 354370

Enc. Submitted documents

c: Requestor
(w/o enclosures)