



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2010

Mr. Gary A. Scott
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2010-13536

Dear Mr. Scott:

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# 392821.

The Conroe Police Department (the "department") received a request for information pertaining to case number 04051822. You claim the submitted information is 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. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 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 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.

Fam. Code § 58.007(c), (e), (j). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The information at issue involves juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" for purposes of Fam. Code § 58.007). Thus, this information is generally confidential under section 58.007(c). In this instance, the requestor is one of the juvenile offenders at issue. Therefore, this requestor has a right to inspect information concerning himself under section 58.007(e). *Id.* § 58.007(e). However, personally identifiable information concerning any other juvenile suspects, offenders, victims, or witnesses must be redacted pursuant to section 58.007(j)(1) of the Family Code. *See id.* § 58.007(j)(1). Accordingly, we have marked information that must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. Further, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your remaining arguments under sections 552.101, 552.130, and 552.147 of the Government Code with respect to the remaining information.

Section 552.101 of the Government Code also encompasses common-law privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial*

Foundation, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See 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. Upon review, we find you have failed to demonstrate how any portion of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a Texas motor vehicle driver's license. *See* Gov't Code § 552.130(a)(1). We note section 552.130 protects personal privacy. Thus, the requestor has a right of access to his own Texas motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). However, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.¹

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov't Code § 552.147. In this instance, the submitted information includes the requestor's social security number. We note section 552.147 is based on privacy principles. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or person's representative, solely on grounds that information is considered confidential by privacy principles). Thus, the requestor's own social security number may not be withheld from him. The department may withhold the remaining social security number we have marked under section 552.147 of the Government Code.²

In summary, the department must withhold the personally identifiable information concerning the other juvenile suspects, offenders, victims, or witnesses, which we have

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

²We note 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. *See* Gov't Code § 552.147(b).

marked, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The department may withhold the social security number we have marked pursuant to section 552.147 of the Government Code. The department must release the remainder of the submitted information to this requestor pursuant to section 58.007(e) of the Family Code.³

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tp

Ref: ID# 392821

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Although this requestor has a right of access under section 58.007(e) of the Family Code to information relating to himself, the department would ordinarily be required to withhold that information under sections 58.007(c). This requestor also has a special right of access under section 552.023 to information relating to himself that the department would ordinarily be required to withhold under sections 552.130 and 552.147. Therefore, if the department receives another request for this same information from a different requestor, the department should resubmit this information and request another decision. See Gov't Code §§ 552.301(a), .302.