



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2010

Ms. T. Tricia Dang
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2010-16665

Dear Ms. Dang:

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# 399001.

The Corpus Christi Police Department (the "department") received a request for eighteen specified event information and corresponding police reports. You indicate you have no information responsive to a portion of the request.¹ You claim portions of the submitted information are 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.

Initially, we note you have not submitted information responsive to the portion of the request for event number 1007028669. To the extent any information responsive to this portion of the request existed on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 made confidential by statute, such as former section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591; *see also* Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports that identify juvenile suspects or furnish basis for their identification). We note section 51.14 is inapplicable in this instance because the juvenile conduct at issue occurred after January 1, 1996. However, section 58.007 of the Family Code may be applicable to this information. 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 Subchapters B, D, and E.

Fam. Code § 58.007(c). 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). Case number 1007280124 and related event information and chronology number 1007036882 involve juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, case number 1007280124 and event information and chronology number 1007036882 are confidential under section 58.007(c)

of the Family Code and the department must withhold the information at issue under section 552.101 of the Government Code.²

Next, you claim section 552.108(a)(1) of the Government Code for portions of the remaining information. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state case numbers 1007270096 and 1007300109 pertain to active criminal cases that are pending investigation or prosecution. Based on your representation, we conclude the release of case numbers 1007270096 and 1007300109 and their respective event information and chronology reports 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 case numbers 1007270096 and 1007300109 and their respective event information and chronology reports.

However, we note 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). *See id.* Thus, with the exception of the basic information, the department may withhold case numbers 1007270096 and 1007300109 and their respective event information and chronology reports under section 552.108(a)(1) of the Government Code.³

Section 552.101 of the Government Code also encompasses section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make confidential the originating telephone numbers of 9-1-1 callers only when they are furnished by a service supplier. *Id.* at 2. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000. You

²As our ruling is dispositive with respect to the information at issue, we need not address your remaining arguments against its disclosure.

³As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

state the City of Corpus Christi is part of an emergency communication district established under section 772.318. We note portions of the information you have marked do not consist of an originating telephone number or address of a 9-1-1 caller that was furnished by a 9-1-1 service supplier. Thus, this information, which we have marked for release, may not be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. To the extent the remaining information you have marked consists of the originating telephone numbers of 9-1-1 callers that were furnished by a 9-1-1 service supplier, we find the marked information is confidential pursuant to section 772.318 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. However, to the extent the remaining information you have marked does not consist of the originating telephone numbers of 9-1-1 callers that were furnished by a 9-1-1 service supplier, the marked information is not confidential pursuant to section 772.318 of the Health and Safety Code and may not be withheld under section 552.101 on that basis.

Section 552.130 of the Government Code 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 a portion of the remaining information appears to consist of Texas motor vehicle record information. Accordingly, to the extent the information we have marked consists of Texas motor vehicle record information, the department must withhold the marked information under section 552.130 of the Government Code.⁴ Conversely, to the extent the marked information does not consist of Texas motor vehicle record information, the department may not withhold it under section 552.130.

In summary, the department must withhold case number 1007280124 and event information and chronology number 1007036228 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of the basic information, the department may withhold case numbers 1007270096 and 1007300109 and their respective event information and chronology reports under section 552.108(a)(1) of the Government Code. To the extent the remaining marked information consist of the originating telephone numbers of 9-1-1 callers that were furnished by a 9-1-1 service supplier, the department must withhold the remaining marked information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. To the extent the information we have marked consists of Texas motor vehicle record information, the department must withhold it under section 552.130 of the Government Code. The remaining information must be released.

⁴We 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 license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in cursive script, appearing to read "Claire Morris Sloan".

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tp

Ref: ID# 399001

Enc. Submitted documents

c: Requestor
(w/o enclosures)