



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2011

Mr. Tyler Wallach
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2011-00682

Dear Mr. Wallach:

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# 406072 (ORR# W004596).

The Fort Worth Police Department (the "department") received a request for police reports pertaining to two specified addresses, including report number 06-146442. You state the department has redacted certain Texas driver's license numbers and license plate numbers pursuant to the previous determination issued in Open Records Letter No. 2006-14726 (2006). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). In addition, the department has redacted an e-mail address pursuant to the previous determination issued in Open Records Decision No. 684 (2009) and social security numbers pursuant to section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. Further, 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).

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. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c) of the Family Code. 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). You state, and we agree, incident report number 06-146442 involves 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, incident report number 06-146442 is confidential and the department must withhold it under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We note the remaining information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The remaining reports consist of completed investigations that are subject to section 552.022(a)(1). The department must release this information pursuant

to section 552.022 unless it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under other law. *See id.* You claim incident report numbers 06-59450 and 06-12888 are subject to section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not "other law" that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Consequently, the department may not withhold incident report numbers 06-59450 and 06-12888 pursuant to section 552.103 of the Government Code. You also raise section 552.108 for incident report numbers 06-59450 and 06-12888. Thus, we will consider your argument under section 552.108 for the submitted information.

Section 552.108(a)(1) of the Government Code 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 incident report numbers 06-59490 and 06-12888 pertain to active criminal prosecutions that are currently pending with the Tarrant County District Attorney's Office (the "district attorney"). You have submitted an affidavit from the district attorney representing incident report number 06-59490 pertains to a criminal prosecution that resulted in a conviction and a sentence of probation for sixty months. The district attorney states in the event the defendant violates the terms and conditions of his probation, he could be sentenced according to the court's ruling. Further, the district attorney states if the defendant receives any jail time, he will not yet have exhausted his state and/or federal post conviction remedies. Based on the affidavit, we understand you to argue the criminal prosecution at issue is still pending because the defendant might appeal a possible sentence. The district attorney further states incident report number 06-12888 pertains to a criminal prosecution in which the defendant was convicted and placed on deferred adjudication. The district attorney states the defendant's probation was revoked and the defendant is now serving an eight-year prison sentence in a Texas correctional facility. The district attorney states the defendant has not filed an appeal but the statute of limitations has not expired and the defendant has not exhausted all post-conviction remedies available. Based on the affidavit, we understand you to argue the criminal prosecution at issue is still pending because the defendant still has an opportunity to appeal. However, we note a mere chance of an appeal is insufficient to demonstrate the release of the submitted information will interfere with law enforcement efforts. Thus, the department may not withhold incident report numbers 06-59490 and 06-12888 under section 552.108(a)(1) of the Government Code.

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.² Gov't Code § 552.130(a)(1), (2). Upon review, we find portions of the remaining information consist of Texas motor vehicle record information. Accordingly, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold incident report number 06-146442 under section 552.101 of the Government Code in conjunction with section 58.007(c) 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 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, toll free at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tf

Ref: ID# 406070

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).