



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2011

Ms. Donna L. Johnson
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2011-14340

Dear Ms. Johnson:

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# 431934.

The Humble Police Department (the "department"), which you represent, received a request for the personnel file of a named officer. We understand the department has redacted Texas driver's license numbers under section 552.130(a)(1) of the Government Code without seeking a decision from this office as permitted by section 552.130(c) of the Government Code¹; Texas license plate numbers under section 552.130(a)(2) of the Government Code

¹Section 552.130(c) of the Government Code authorizes a governmental body to redact from the requested information it discloses, without the necessity of requesting a decision from this office, a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country and a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document. Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)) (governmental body may redact information described by subsections 552.130(a)(1) and (3) from any information the governmental body discloses without necessity of requesting decision from attorney general); *see id.* (to be codified at Gov't Code § 552.130(d)) (entitling requestor to appeal governmental body's decision to withhold information pursuant to section 552.130(c) to attorney general); *id.* (to be codified at Gov't Code § 552.130(e)) (requiring governmental body that withholds information pursuant to section 552.130(c) to provide notice to requestor).

pursuant to Open Records Decision No. 684 (2009)²; and social security numbers pursuant to section 552.147 of the Government Code.³ You state the department has released some of the requested information, but claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the department has redacted vehicle identification numbers from the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of our records indicate, the department is authorized to withhold vehicle identification numbers without first seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). Because we can discern the nature of the redacted information, being deprived of the information does not inhibit our ability to make a ruling. However, in the future, the department must not redact information from the information it submits to this office in seeking an open records ruling, unless the department is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. *See* Gov't Code § 552.301(e)(1)(D). Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302.

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. Section 58.007(c) provides as follows:

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;

²Open Records Decision No. 684 is 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 opinion.

³Gov't Code § 552.147(b) (governmental body may redact social security number without necessity of requesting decision from this office under the Act).

(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). Upon review, we find some of the submitted documents consist of law enforcement records involving alleged juvenile delinquent conduct that occurred after September 1, 1997. *See id.* §§ 51.02(2) (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), 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). None of the exceptions in section 58.007 appears to apply. Therefore, this information is confidential pursuant to section 58.007(c) of the Family Code. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code.⁴ You also seek to withhold internal administrative records that reference this juvenile delinquent conduct. However, the administrative records do not consist of law enforcement records and files concerning a juvenile offender. Thus, the internal administrative records do not constitute juvenile law enforcement records for purposes of section 58.007, and the department may not withhold them under section 552.101 of the Government Code on that ground. The submitted information contains other law enforcement records. None of the alleged offenders in these remaining law enforcement records is younger than seventeen years of age. *See id.* § 51.02(2). Because the legislature has chosen to protect only the law enforcement records of a child who is between the ages of ten and sixteen at the time of the reported conduct, we find the remaining law enforcement records are not confidential under section 58.007(c), and the department may not withhold them under section 552.101 on that ground. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

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). The types of information considered intimate or 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 found some kinds of medical information or information indicating disabilities or specific illnesses

⁴As our ruling is dispositive, we do not address your other argument to withhold this information.

are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Some of the remaining information is highly intimate or embarrassing and is not of legitimate concern to the public. Therefore, the department must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy.

You assert the submitted recordings are excepted from disclosure under section 552.130 of the Government Code. Section 552.130(a) provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). We have marked motor vehicle record information in the remaining documents that the department must withhold under section 552.130. You also seek to withhold the submitted audio and video recordings under section 552.130 because they contain driver's license and license plate numbers that the department is not able to redact. However, you have not identified, and we are not able to locate, any driver's license or discernable license plate numbers in these recordings. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must label specific information requested to indicate which exceptions apply to which parts of the information). Thus, we find you have not established any part of the submitted recordings is excepted from disclosure pursuant to section 552.130.

To conclude, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code and common-law privacy. The department must also withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/akg

Ref: ID# 431934

Enc. Submitted documents

c: Requestor
(w/o enclosures)