



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2012

Ms. Doris Preusse
Senior Records Clerk
Pflugerville Police Department
P.O. Box 679
Pflugerville, Texas 78691

OR2012-08384

Dear Ms. Preusse:

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# 455789.

The Pflugerville Police Department (the "department") received a request for information pertaining to a specified automobile accident. You state the department has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. 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, which provides 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). Section 58.007(c) does not apply to information that relates to a juvenile as a complainant, victim, witness, or other involved party, and not as a suspect or offender. You argue the submitted information is subject to section 58.007(c) of the Family Code. Upon review, we find you have not demonstrated how the submitted information, which involves an eighteen-year-old arrestee, involves juvenile conduct for purposes of section 58.007 of the Family Code. Accordingly, the department may not withhold the submitted information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). You inform us that some of the submitted information was used or developed in an investigation by the department of alleged or suspected child abuse for purposes of section 261.201. *See id.* § 261.001(1)(C) (definition of child abuse includes “physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child”); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not

been married or who has not had disabilities of minority removed for general purposes). Accordingly, we find the information at issue is subject to section 261.201. You have not indicated the department has adopted a rule that governs the release of this information in this instance; therefore, we assume that no such regulation exists. Given that assumption, we conclude the information we have marked is confidential under section 261.201(a). *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, this information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state, or another state or country, is excepted from public release.¹ Gov't Code § 552.130(a)(1)-(2). Upon review, we conclude the department must withhold the driver's license number we have marked in the remaining information under section 552.130(a)(1) of the Government Code. Furthermore, we conclude the motor vehicle information we have marked in the remaining information must generally be withheld under section 552.130(a)(2) of the Government Code. We note, however, section 552.130 protects privacy. In this instance, the requestor may be an agent of the insurance company providing coverage for the motor vehicle listed in the submitted information. As such, the requestor may have a right of access to the information at issue under section 552.023 of the Government Code as an authorized representative of the insured party. *See id.* § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.”); *see also* ORD 481 at 4 (privacy theories not implicated when individual requests information concerning himself). Thus, if the requestor is the insured party’s authorized representative, then the motor vehicle information we have marked under section 552.130(a)(2) of the Government Code may not be withheld under that section and must be released pursuant to section 552.023. However, if the requestor is not the insured party’s authorized representative, then the department must withhold this information under section 552.130(a)(2).

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the driver's license number we have marked in the remaining information under section 552.130(a)(1) of the Government Code. If the requestor is the insured party's authorized representative, then the motor vehicle information we have marked under section 552.130(a)(2) of the Government Code may not be withheld under that section and must be released pursuant to section 552.023 of the Government Code.

¹The 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).

However, if the requestor is not the insured party's authorized representative, then the department must withhold this information under section 552.130(a)(2) 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 455789

Enc. Submitted documents

c: Requestor
(w/o enclosures)