



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2012

Mr. Darrell G-M Noga
For City of Coppell
Fee, Smith, Sharp & Vitullo, L.L.P.
13155 Noel Road, Suite 1000
Dallas, Texas 75240

OR2012-13297

Dear Mr. Noga:

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# 462809 (City of Coppell ORR# 10834).

The City of Coppell (the "city"), which you represent, received a request for documents pertaining to arrests of the requestor's son for the possession of drug related paraphernalia, robbery, and drug possession between December 1, 2011 and May 31, 2012. You state some information has been or will be released to the requestor. You claim that portions of the remaining information are excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note some of the submitted information is not responsive to the instant request because it does not pertain to an arrest of the requestor's son. We have marked this non-responsive information. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release non-responsive information in response to the request.

¹Although you do not raise sections 552.130 and 552.147 of the Government Code in your brief, we understand you to raise these sections based on your markings in the submitted information.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. Section 552.101 encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Fam. Code § 58.007(c). The relevant language of section 58.007 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.

Id. § 58.007(c), (e), (j). The responsive information involves delinquent conduct of children that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). Therefore, the responsive information is generally confidential under section 58.007.

As you acknowledge, the requestor is a parent of one of the juvenile offenders named in the submitted records. Accordingly, section 58.007(e) allows her access to her son’s law enforcement records. *Id.* § 58.007(e). However, the city must withhold any personally identifiable information about other juvenile suspects, offenders, or witnesses who are not the requestor’s son. *See id.* § 58.007(j)(1). For purposes of section 58.007(j)(1), a juvenile suspect or offender is a child as defined by section 51.02 of the Family Code. *See id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age). For the purposes of section 58.007(j)(1), a juvenile victim or witness is a person who is under eighteen years of age. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. However, the remaining information you seek to withhold does not identify a juvenile suspect, offender, victim, or witness. Thus, the city may not withhold any of the remaining information under section 58.007(j)(1). Section 58.007(j)(2) further provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* 58.007(j)(2). Accordingly, we will address your additional arguments against disclosure, as well as the applicability of sections 552.101 and 552.136 to the responsive information.³

Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle operator’s license or driver’s license, title, or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1)-(2). The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, we note the driver’s license number you have marked belongs to the minor child of the requestor. Section 552.130 is based on privacy principles. Thus, this requestor has a right of access to her child’s driver’s license number, and the city may not withhold the number on this basis. *Id.* § 552.023(a) (person or person’s authorized representative has special right of access to information held by governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person’s privacy interests); *see also id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on the grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or individual’s authorized representative requests information concerning the individual).

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.147 of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act.⁴ Gov’t Code § 552.147(a). You seek to withhold the social security number of the requestor’s minor child. However, because section 552.147 protects personal privacy, the requestor has a right of access to her minor child’s social security number under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a). Thus, none of the responsive information may be withheld under section 552.147.

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 type 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 that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 provides in part that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the city must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 in conjunction with section 58.007(j)(1) of the Family Code, section 552.130 of the Government Code, section 552.101 in conjunction with common-law privacy, and section 552.136 of the Government Code. The remaining responsive information must be released.⁵

⁴Section 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 under the Act.

⁵We note the requestor in this case has a special right of access under section 552.023 of the Government Code and section 58.007(e) of the Family Code to the information being released. If the city receives another request for this same information from a different requestor, it must again seek a ruling from this office.

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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/dls

Ref: ID# 462809

Enc. Submitted documents

c: Requestor
(w/o enclosures)