



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 27, 2012

Ms. Michele Tapia
Assistant City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2012-18985

Dear Ms. Tapia:

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# 472033 (City Ref. Nos. PD-194, PD-246).

The Carrollton Police Department (the "department") received two requests for information related to a specified case. You claim the requested information is 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 representative sample of information.¹

Initially, you inform us by letter dated October 31, 2012, that you withdraw your request for a ruling regarding the second request for information pertaining to the specified case (Ref. No. PD-246). You state the second requestor has narrowed her request for information, and you have released the information subject to the more narrowly tailored request to her. Therefore, this ruling does not address the second request.

¹We 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.

Next, we note the submitted information includes search warrants that have been filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless it is made confidential under the Act or "other law." See Gov't Code § 552.022(a)(17); see also *Star Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Although you seek to withhold portions of the search warrants under section 552.108 of the Government Code, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential under the Act and is not "other law" that makes information expressly confidential for purposes of section 552.022(a)(17). Therefore, no portions of the search warrants, which we have marked, may be withheld under section 552.108. We note, however, you also claim the search warrants are excepted under section 552.101 of the Government Code. Further, one of the search warrants contains motor vehicle record information protected by section 552.130 of the Government Code. Because sections 552.101 and 552.130 make information confidential under the Act, we will consider the applicability of these exceptions to the search warrants along with the remaining information not subject to section 552.022.

You seek to withhold Exhibit C under section 552.101 of the Government Code, which 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. Section 58.007 provides, in relevant part:

(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). Thus, under section 58.007, law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or

after September 1, 1997 are confidential. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), a “child” is a person who was ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Upon review, we find report number 2012-006659 relates to a juvenile engaged in conduct indicating a need for supervision on or after September 1, 1997. Thus, report number 2012-006659 is confidential under section 58.007(c) and must be withheld under section 552.101 of the Government Code. However, the remaining information in Exhibit C pertains to a capital murder case in which the suspect is an adult. The department has failed to demonstrate that the remaining information in Exhibit C relates to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997. Therefore, the remaining information in Exhibit C is not confidential under section 58.007(c), and the department may not withhold it under section 552.101 of the Government Code on that basis.

You seek to withhold Exhibit D and the remaining marked portions of Exhibit C not subject to section 552.022 under section 552.108 of the Government Code. Section 552.108 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(a)(1) 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 the information at issue relates to a pending criminal prosecution. Based on your representations and our review, we find release of the information at issue 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. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold Exhibit D and the remaining marked portions of Exhibit C not subject to section 552.022 under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(2). The department must withhold the information you have marked, and the additional information we have marked, in the remainder of Exhibit C under section 552.130 of the Government Code.

In summary, the department must withhold report number 2012-006659 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department may withhold Exhibit D and the remaining marked portions of Exhibit C not subject to section 552.022 of the Government Code under

section 552.108(a)(1) of the Government Code. The department must withhold the information you have marked, and the additional information we have marked, in the remainder of Exhibit C 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 472033

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)