



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2013

Ms. Judy Hickman
Assistant Supervisor
Police Records Division
City of Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704

OR2013-20193

Dear Ms. Hickman:

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# 506128.

The Beaumont Police Department (the "department") received a request for information pertaining to a specified incident report involving the requestor. You state the department will release some of the requested information. We understand you claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. You state the submitted information relates to a criminal case that did not result in a conviction or deferred adjudication. However, you also inform us the statute of limitations has not yet run for this case and there could still be a prosecution for this offense. Based on your conflicting representations and our review of the submitted documents, we are unable to determine that the case at issue concluded in a final result other than conviction or

deferred adjudication. Therefore, we find that you have failed to demonstrate the applicability of section 552.108(a)(2) to the submitted information, and it may not be withheld on this basis.

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, such as section 58.007 of the Family Code which 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). Section 58.007(c) is applicable to law enforcement records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007). 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 at the time of the reported conduct. *See id.* § 51.02(2). Section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. *See id.* § 58.007(c). Upon review, we find the submitted information does not involve a juvenile identified as a suspect, offender, or defendant. Therefore, we find that you have failed to demonstrate the applicability of section 58.007 to the submitted information, and it may not be withheld under section 552.101 on this basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To

demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). However, we note the individual whose privacy interests are at issue in this instance is the requestor. The requestor has a right of access under section 552.023 of the Government Code to any information the department would be required to withhold from the public to protect the requestor's privacy. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the department may not withhold any of the information at issue under section 552.101 on the basis of common-law privacy.

Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of specified categories of individuals. *See* Gov't Code § 552.117. We note section 552.117 applies only to records that a governmental body is holding in an employment capacity. The information at issue pertains to a criminal investigation. Further, there is no indication the individuals at issue fall within any of the specified categories of individuals. Therefore, we find section 552.117 does not apply to the information at issue, and the department may not withhold any portion of the submitted information on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release.¹ *Id.* § 552.130(a). Upon review, we find the department must withhold the driver's license information we have marked under section 552.130 of the Government Code. However, the requestor has a right of access to her own driver's license information pursuant to section 552.023 of the Government Code, and the department may not withhold this information from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the department may not withhold any of the remaining information under section 552.130 of the Government Code.

We note you also raise section 552.101 of the Government Code in conjunction with section 201.806 of the Transportation Code for the requestor's driver's license information. Section 201.806 provides:

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).

(a) The [Texas Department of Transportation (“TxDOT”)] shall:

(1) tabulate and analyze the vehicle accident reports it receives; and

(2) annually or more frequently publish statistical information derived from the accident reports as to the number, cause, and location of highway accidents, including information regarding the number of:

(A) accidents involving injury to, death of, or property damage to a bicyclist or pedestrian; and

(B) fatalities caused by a bridge collapse, as defined by Section 550.081.

(b) The [TxDOT] shall provide electronic access to the system containing the accident reports so that the Department of Public Safety can perform its duties, including the duty to make timely entries on driver records.

Transp. Code § 201.806. Section 201.806 pertains to administrative procedures required of TxDOT with regard to accident reports. We note, however, section 201.806 does not make information confidential for the purposes of the Act. *See* Open Records Decision No. 487 at 2 (1987) (confidentiality under statutory predecessor to section 552.101 required express language making certain information confidential or stating information shall not be released to public); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure). Accordingly, none of the information at issue may be withheld under section 552.101 of the Government Code on that basis.

In summary, the department must withhold the driver’s license information we have marked under section 552.130 of the Government Code. The remaining information must be released.²

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.

²We note the remaining information contains a social security number. 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 under the Act. Gov’t Code § 552.147(b). We also note the requestor has a special right of access to some of the information being released in this instance. *See id.* § 552.023(a). Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, then the department should again seek a ruling from this office.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Megan G. Holloway". The signature is written in a cursive style with a large, looping final flourish.

Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/tch

Ref: ID# 506128

Enc. Submitted documents

c: Requestor
(w/o enclosures)