



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2014

Ms. Kelley Messer
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2014-20436

Dear Ms. Messer:

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# 542736.

The Abilene Police Department (the "department") received a request for a copy of a specified phone call, a copy of specified dash camera footage, a copy of any reports that correspond to a specified case number, and a recording of all communications between department officers and dispatchers during a specified time period. You state you have released most of the requested information to the requestor. You claim the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.108 of the Government Code provides in part:

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). Generally, section 552.108(a)(1) is mutually exclusive of section 552.108(a)(2). Section 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body claiming an exception under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You assert the submitted recordings are excepted under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. You state, “[i]t is virtually impossible from the audio to know which communication is part of an ongoing criminal investigation or cases that did not result in conviction or deferred adjudication.” Because you have not specified which portions of the information at issue pertain to pending cases and which pertain to closed cases that did not result in conviction or deferred adjudication, we find you have failed to demonstrate the applicability of section 552.108 to the submitted information. *See Gov't Code* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Therefore, we conclude the department may not withhold any portion of the information at issue under either section 552.108(a)(1) or section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101.² Section 552.101 encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on

²The 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).*

or after September 1, 1997. Fam. Code § 58.007(c). The relevant portion of section 58.007 provides:

(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.

Id. § 58.007(c). *See also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age at the time of the reported conduct). Upon review, we find portions of the submitted recordings involve delinquent conduct or conduct indicating a need for supervision by juveniles that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). Further, it does not appear that any of the exceptions in section 58.007 apply. Therefore, these portions of the submitted recordings are confidential under section 58.007(c) of the Family Code and the department must withhold them under section 552.101 of the Government Code.

We note some of the remaining submitted information is subject to section 552.136 of the Government Code. Section 552.136(b) states 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). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Therefore, the department must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

Additionally, some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Upon review, we find portions of the

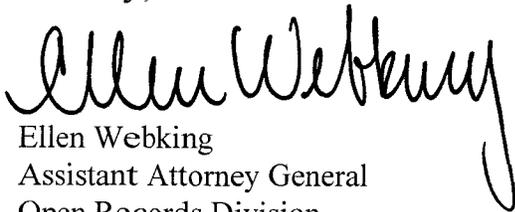
remaining information consist of motor vehicle record information. Accordingly, the department must withhold the submitted motor vehicle record information under section 552.130 of the Government Code.

In summary, the department must withhold the portions of the submitted recordings that involve delinquent conduct or conduct indicating a need for supervision by juveniles that occurred after September 1, 1997 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold insurance policy numbers under section 552.136 of the Government Code. The department must withhold motor vehicle record information 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.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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/ac

Ref: ID# 542736

Enc. Submitted documents

c: Requestor
(w/o enclosures)