



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 11, 2008

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2008-03292

Dear Mr. Phillips:

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# 304571.

The Fort Worth Police Department (the "department") received a request for two specified incident reports. You claim that the submitted incident report is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have not submitted the requested incident report from 2001. To the extent this incident report existed when the department received this request, we assume it has been released. If not, you must do so at this time. *See* Gov't Code §§ 552.006, .301(a), .302; *see* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from public 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 conduct that occurred on or after September 1, 1997 are confidential under section 58.007. *See* Fam. Code § 58.007(c). Juvenile law enforcement records pertaining

to conduct occurring before January 1, 1996 are generally confidential under former section 51.14(d) of the Family Code. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). For purposes of former section 51.14(d) or the current section 58.007, a juvenile is a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2).

This office has concluded that section 58.007 of the Family Code, as enacted by the Seventy-fourth Legislature, does not make confidential juvenile law enforcement records relating to conduct that occurred on or after January 1, 1996. Open Records Decision No. 644 (1996). The Seventy-fifth Legislature, however, amended section 58.007 to once again make juvenile law enforcement records confidential effective September 1, 1997. Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187 (Vernon). However, the legislature chose not to make this most recent amendment retroactive in application. Consequently, law enforcement records pertaining to juvenile conduct that occurred between January 1, 1996 and September 1, 1997, are not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007 of the Family Code. In this instance, we note that the suspect listed in the submitted report was seventeen years of age at the time of the conduct; therefore, the suspect is not considered a juvenile under either the former section 51.14(d) or the current section 58.007 of the Family Code. Furthermore, we note that the submitted report pertains to conduct that occurred between January 1, 1996 and September 1, 1997, and is therefore not confidential under either the former section 51.14(d) or the current section 58.007 of the Family Code. Thus, the submitted report 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 if the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and the information 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 and 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.* 540 S.W.2d at 683. This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review of the submitted report, we find that some of the information is highly intimate or embarrassing and is not of legitimate public concern. Therefore, the department must withhold the information we have marked under

section 552.101 of the Government Code in conjunction with common-law privacy. As you have raised no other exceptions to disclosure, the remaining information must be released.¹

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

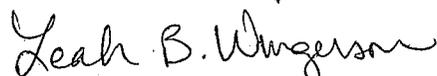
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

¹ You state that you have redacted Texas motor vehicle record information under section 552.130 of the Government Code pursuant to a previous determination issued to the City of Fort Worth in Open Records Letter No. 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state that you are withholding social security numbers under section 552.147 of the Government Code. Section 552.147(b) authorizes a government 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.

complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 304571

Enc. Submitted documents

c: Ms. Linda Goodrich
FBI NICS
P.O. Box 4278
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(w/o enclosures)