



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 26, 2009

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> floor  
Fort Worth, Texas 76102

OR2009-01008

Dear Ms. Byles:

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 #336996 (PIR No. 1155-09).

The City of Fort Worth ("the city") received a request for incident report no. 96-404960. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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).

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 requested information pertains to juvenile 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, none of the requested information may be withheld under section 552.101 on this basis.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy 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 types 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.* at 683. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos.470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We note that this office has also found that common-law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007. Upon review, we find that the information identifying the juvenile arrestee, which you have highlighted, is subject to section 552.101 in conjunction with common-law privacy, and must be withheld.

Information may also be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which release of the information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* The city claims that the victim's identity should be withheld because the "release of his name could place him in imminent danger as suspect(s) could retaliate against him for reporting the offense." Upon review of the arguments and the submitted information, we find that you have failed to demonstrate that revealing the victim's identity would likely cause him to face imminent danger of harm or death. Thus, you have failed to demonstrate that special circumstances exist, and no portion of the information may be withheld on that basis.

We note that the city has redacted information pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2007-00198 (2007) (authorizing the city to withhold class designations, restrictions, expiration dates, license year of a Texas issued driver's

license, and a vehicle identification number) and 2006-14726 (2006) (authorizing the city to withhold a Texas driver's license number, identification number, license plate number, and license year of a motor vehicle). However, the report also contains a Texas driver's license number that the city failed to redact.<sup>1</sup> Section 552.130 of the Government Code excepts from disclosure information that relates to a driver's license issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). The city must withhold the driver's license number we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the marked information identifying a juvenile arrestee pursuant to section 552.101 in conjunction with common-law privacy. It must also withhold the marked driver's license number pursuant to section 552.130. 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](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 at (512) 475-2497.

Sincerely,



Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/sdk

Ref: ID# 336996

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).