



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 19, 2009

Mr. Jason Day
City Attorney
City of Royse City
P.O. Box 638
Royse City, Texas 75189

OR2009-02169

Dear Mr. Day:

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# 335345.

The City of Royse City (the "city") received a request for all information pertaining to a named individual. You state you have provided some of the requested information to the requestor. You claim that some of 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 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 makes confidential juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Fam. Code § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). The relevant language of section 58.007 reads as follows:

(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 Subchapter B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

- (1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and
- (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). We have reviewed the submitted information and find it pertains to allegations of juvenile delinquent conduct that occurred after September 1, 1997.

The named individual is a "child" for purposes of subsections 58.007(c) and 58.007(e) in report numbers 07-03-0206, 07-04-0419, 0411N6140, and 0601C0010; thus, these reports are juvenile law enforcement records relating to delinquent conduct concerning this individual. *See id.* §§ 51.02(2), 58.007(c), (e). Under section 58.007(e), the child may

inspect law enforcement records concerning himself. *See id.* § 58.007(e). The requestor has provided a signed, written consent from the individual at issue. Therefore, pursuant to section 58.007(e), the requestor, with the juvenile's consent, has a right to inspect juvenile law enforcement records concerning this individual. However, the personally identifiable information concerning other juveniles involved in these reports must be redacted pursuant to section 58.007(j)(1) of the Family Code. *See id.* § 58.007(j). Accordingly, the city must withhold the identifying information of the juveniles who are not the named individual in report numbers 07-03-0206, 07-04-0419, 0411N6140, and 0601C0010, which you have marked, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.

We note that the named individual is listed as seventeen years of age in report numbers 07-07-0212 and 07-08-0130. Thus, the named individual is not a "child" for purposes of subsections 58.007(c) and 58.007(e) in these reports. *See id.* §§ 51.02(2), 58.007(c), (e). However, other individuals involved in these incidents as suspects, offenders, or defendants were aged fourteen, fifteen, and sixteen at the time of the incidents at issue. Thus, we find that report numbers 07-07-0212 and 07-08-0130 involve juvenile delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply to this information; therefore, report numbers 07-07-0212 and 07-08-0130 are confidential pursuant to section 58.007(c) of the Family Code.

The requestor, however, is an investigator with the United States Investigations Services ("USIS") and requests the information at issue as part of a background investigation for a national security or public trust employment position. We also note USIS is under contract to perform investigations on behalf of the United States Office of Personnel Management ("OPM"). OPM is authorized to perform background investigations of prospective federal employees to ensure applicants have not broken the law or engaged in other conduct making them ineligible for federal employment. *See Mittleman v. Office of Pers. Mgmt.*, 76 F.3d 1240, 1243 (D.C. Cir. 1996); *see also* 5 U.S.C. §§ 3301 (president may prescribe regulations for admission of individuals into civil service), 1304 (investigations conducted by OPM), 1104 (president may delegate personnel management functions to OPM); 5 C.F.R. pts. 731, 732, 736 (authorizing OPM to investigate applicants for federal employment). OPM is subject to Executive Order Number 10,450, which provides that "[t]he appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation." Exec. Order No. 10,450, § 3, 18 Fed. Reg. 2489 (Apr. 27, 1953), reprinted as amended in 5 U.S.C. § 7311 (2000). While the scope of the investigation depends on the relation of the employment to national security, "in no event shall the investigation include less than a national agency check (including a check for the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law enforcement agencies." *Id.*

OPM has a right to the criminal history record information ("CHRI") of state and local criminal justice agencies when its investigation is conducted with the consent of the

individual being investigated. See 5 U.S.C. § 9101(b)(1), (c). Furthermore, where USIS conducts an investigation on behalf of OPM, USIS is authorized to receive CHRI. 20 Op. Off. Legal Counsel 299 (1996). CHRI is defined as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision and release," but does not include "identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system" or "records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality." 5 U.S.C. § 9101(a)(2).

As noted above, the requestor has submitted written consent from the individual under investigation for the release of that individual's CHRI. Furthermore, federal law provides that OPM's right of access to CHRI preempts state confidentiality provisions. *Id.* § 9101(b)(4) (section 9101 "shall apply notwithstanding any other provision of law . . . of any State"). Thus, we conclude that, where a requestor seeks information as part of an investigation conducted on behalf of OPM, the requestor has a right of access to CHRI held by the city regarding the individual under investigation. In addition, we conclude such a right of access under federal law preempts the state confidentiality provision you claim. See *English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting state law is preempted to extent it actually conflicts with federal law); see also *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). As stated above, report numbers 07-07-0212 and 07-08-0130 are subject to section 58.007(c) of the Family Code. However, these reports contain CHRI of the individual under investigation by USIS. Therefore, the city must release the CHRI relating to the individual under investigation from report numbers 07-07-0212 and 07-08-0130. The remainder of report numbers 07-07-0212 and 07-08-0130 must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

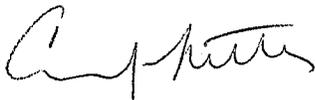
To summarize: the requestor has a right to inspect report numbers 07-03-0206, 07-04-0419, 0411N6140, and 0601C0010 pursuant to section 58.007(e) of the Family Code; however, the city must withhold the identifying information of the juveniles who are not the named individual in these reports, which you have marked, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The city must release the CHRI relating to the named individual from report numbers 07-07-0212 and 07-08-0130 pursuant to federal law. The remainder of report numbers 07-07-0212 and 07-08-0130 must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.¹

¹Should the city receive another request for these same records from a person who would not have a right of access to the information, the city should resubmit this same information and request another ruling from this office. See Gov't Code § 552.301(a).

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 at (512) 475-2497.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jb

Ref: ID# 335345

Enc. Submitted documents

c: Requestor
(w/o enclosures)