



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 4, 2009

Mr. John Ohnemiller  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2009-02836

Dear Mr. Ohnemiller:

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# 336175.

The Midland Police Department (the "department") received a request for the incident reports pertaining to case numbers 2008-05200003 and 2005-08310030. You state the department has provided most of report number 2008-05200003 to the requestor. You claim the remaining submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You seek to withhold report number 2005-08310030 under section 552.101 in conjunction with section 58.007 of the Family Code. Section 552.101 excepts from public 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 makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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.

Fam. Code § 58.007(c). For purposes of section 58.007, "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). Incident report number 2005-08310030 involves a fifteen year old individual arrested for shoplifting. Thus, we find this report involves juvenile delinquent conduct. *See id.* § 51.03(a) (defining "juvenile delinquent conduct" for the purposes of section 58.007). It does not appear that any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find incident report number 2005-08310030 is generally confidential pursuant to section 58.007(c) of the Family Code.

We note, however, the requestor is a recruiter for the United States Navy (the "Navy"), and we understand the juvenile individual named in report number 2005-08310030 is a potential enlistee in the Navy. The United States Department of Defense (the "DoD") is authorized to perform background investigations of persons seeking to enlist to determine the eligibility of applicants for acceptance into armed services. *See* 5 U.S.C. § 9101(b)(1)(C); *see also id.* § 9101(a)(6)(A) (DoD is a covered agency for purposes of section 9101). The Navy 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 id.* § 9101(b)(1), (c); *see also* 10 U.S.C. § 111(b)(6) (DoD includes the Department of the Navy). 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).

Federal law provides the Navy'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"). We conclude the Navy's 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 *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting federal agency acting within scope of its congressionally delegated authority may preempt state regulation). However, federal law also provides the Navy's right of access is contingent on receiving written consent from the individual under investigation for the release of such CHRI. See 5 U.S.C. § 9101(c). In this instance, we have no indication the requestor has provided a signed authorization for release from the individual under investigation for the release of the information at issue. Therefore, if the Navy provides a signed written consent of release from the individual being investigated, the department must release CHRI from report number 2005-08310030 to the Navy and withhold the remainder of the report under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. If the Navy does not provide a written consent of release, the department must withhold report number 2005-08310030 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

You seek to withhold certain Texas motor vehicle record information in report number 2008-05200003 under section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Thus, the department must withhold the Texas motor vehicle record information we have marked in report number 2008-05200003 under section 552.130 of the Government Code.

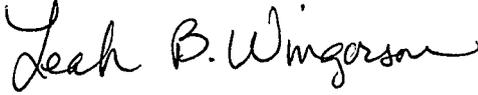
In summary, upon receipt of a written consent to release signed by the individual whose juvenile records are at issue, the department must release CHRI from report number 2005-08310030 to the Navy and withhold the remainder of the report under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Otherwise, report number 2005-08310030 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold the marked Texas motor vehicle record information in report number 2008-05200003 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.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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/cc

Ref: ID# 336175

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)