



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2009

Ms. Cathy Cunningham
Boyle and Lowry, L.L.P.
Attorneys and Counselors
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Irving, Texas 75062-2763

OR2009-12170

Dear Ms. Cunningham:

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# 353895.

The City of Keller (the "city"), which you represent, received a request for communications relating to members of the city's police or fire departments from specified city officials to the Tarrant County District Attorney's Office, the Texas Rangers, the Texas Department of Public Safety, any state licensing agency, or the Federal Bureau of Investigation since June 1, 2008. You state you have released some of the information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us, and provide documentation showing, that the requestor specifically excluded website passwords from the information he is seeking. The city does not need to release non-responsive information in response to this request, and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismiss'd).

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, including section 58.007 of the Family Code. The relevant language of section 58.007 provides:

¹We note in your letter of June 25, 2009, you no longer assert section 552.110 of the Government Code.

(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.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55 (a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). For purposes of section 58.007(c), "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* Fam. Code § 51.02(2).

Upon review, we find the submitted incident report involves allegations of juvenile conduct that occurred on or after September 1, 1997. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). As such, this information constitutes law enforcement records that are confidential pursuant to section 58.007(c). Accordingly, the city must withhold the submitted incident report in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.²

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code.³ *See* Gov't Code § 552.117(a)(2). We agree that the city must withhold the highlighted information it has marked under section 552.117(a)(2).

²As our ruling is dispositive, we do not address your other argument against disclosure for this information.

³Section 552.117(a)(2) applies to a "peace officer" as defined by article 2.12 of the Code of Criminal Procedure.

You assert that an e-mail address in the submitted information is confidential pursuant to section 552.137 of the Government Code. Section 552.137 makes certain e-mail addresses confidential, providing the following:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. See *id.* § 552.137(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under section 552.137. You do not inform us that the owner of the e-mail address at issue has affirmatively consented to its public disclosure. Therefore, the city must generally withhold the e-mail address we have marked under section 552.137. However, to the extent the e-mail address belongs to an employee of an entity with which the city has a contractual relationship, or falls under any of the other exceptions listed under subsection 552.137(c), the e-mail address may not be withheld under section 552.137.

In summary, the city must withhold the submitted incident report under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The city must withhold the information it has marked under section 552.117(a)(2) of the Government Code. The city must withhold the e-mail address we have marked under section 552.137, unless the city receives consent from the owner for its release. 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, 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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 353895

Enc. Submitted documents

c: Requestor
(w/o enclosures)