



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 1, 2010

Mr. Mack Reinwand
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2010-01514

Dear Mr. Reinwand:

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# 368833 (APD No. 200911-055).

The Arlington Police Department (the "department") received a request for reports pertaining to a specified address and occurring over a specified period of time. You state some of the requested information has been released. You claim 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(c) of the Family Code. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See* Fam. Code § 58.007(c). 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 Subchapters B, D, and E.

Id. § 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. *See id.* § 51.02(2). A portion of the submitted information, which we have marked, pertains to a juvenile engaged in delinquent conduct. *See* Fam. Code § 51.03 (defining "delinquent conduct" for purposes of Fam. Code § 58.007). This information is subject to section 58.007 of the Family Code. It appears none of the exceptions in section 58.007 apply; therefore, the information we have marked is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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. *See 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. *See id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. Here, you seek to withhold the information at issue in its entirety because the requestor knows the identity of the subject individual. However, you have not demonstrated, nor does it appear, that this is a situation where the information at issue must be withheld in its entirety on the basis of common-law privacy. We agree that some of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, no portion of the remaining information may be withheld under section 552.101 on that basis.

Section 552.101 also encompasses section 411.083 of the Government Code. Criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Gov’t Code § 411.083(a); Open Records Decision No. 565 (1990). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. ORD 565. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 deems confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. The information we have marked is confidential under chapter 411 and must be withheld under section 552.101 of the Government Code.

Portions of the remaining information are subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” *Id.* § 552.130. This section further provides information relating to a personal identification document issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(3). Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.²

In summary, the department must withhold the information we marked under (1) section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, (2) section 552.101 in conjunction with common-law privacy, (3) section 552.101 in conjunction with chapter 411 of the Government Code, and (4) section 552.130 of the

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including Texas driver’s license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Government Code. As you raise no further exception to disclosure of the remaining information, it must be released.³

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, toll free, at (888) 672-6787.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/rl

Ref: ID# 368833

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental 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. Gov't Code § 552.147(b).