ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2010

Ms. Cecilia Gamez
Crime Records Bureau
McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2010-10274

Dear Ms. Gamez:

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# 386234.

The McAllen Police Department (the "department") received a request for information pertaining to a specified incident. You claim that the requested information is excepted from disclosure under section 552.108 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."[1] Gov't Code § 552.101. Section 552.101 encompasses 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(c). Section 58.007 reads in relevant part:

> (c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

[1]The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

> 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.

Fam. Code § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of title 3 of the Family Code). 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). Upon review, we find the submitted report involves a juvenile engaged in delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply to this report. Therefore, the submitted report is generally confidential pursuant to section 58.007(c) of the Family Code.

We note, however, the requestor is a representative of the McAllen Housing Authority (the "housing authority"). Section 1437d(q)(1)(A) of title 42 of the United States Code, the federal Housing Opportunity Program Extension Act of 1996, provides that "[n]otwithstanding any other provision of law, . . . the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, covered housing assistance for purposes of applicant screening, lease enforcement, and eviction." 42 U.S.C. § 1437d(q)(1)(A). Section 1437d(q)(1)(C) provides that "[a] law enforcement agency described in subparagraph (A) shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality." *Id.* § 1437d(q)(1)(C). In Open Records Decision No. 655 (1997), this office concluded these federal statutes authorize local housing authorities to obtain the criminal history record information ("CHRI") of adult and juvenile tenants. CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). However, the federal law limits the purposes for which a public housing authority may request CHRI.

It provides, among other things, that (1) public housing agencies may receive CHRI of adult and juvenile applicants or tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. *See* 42 U.S.C. § 1437d(q)(1)(A), (C); ORD 655 at 3-5. Section 1437d(q)(1)(A) states a housing authority shall be provided access to the CHRI "[n]otwithstanding any other provision of law." 42 U.S.C. § 1437d(q)(1)(A). Based on this language, we find section 1437d(q)(1)(A) prevails over section 58.007 of the Family Code. *Cf. Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). However, as previously discussed, section 1437d(q)(1)(C) allows a housing authority to obtain access to juvenile CHRI "only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality." 42 U.S.C. § 1437d(q)(1)(C). Juvenile justice information is confidential but may be released to any "entity to which [the Texas Department of Public Safety ("DPS")] may grant access to adult criminal history records as provided by Section 411.083, Government Code[.]" Fam. Code § 58.106(a)(2). Section 411.083(b)(2) of the Government Code states that DPS is required to provide CHRI to a non-criminal justice agency authorized to receive CHRI pursuant to federal statute, executive order, or state statute. Gov't Code § 411.083(b)(2). Because housing authorities are authorized to obtain adult CHRI under sections 1437d(q)(1)(A) and 411.083(b)(2), they are also authorized to obtain similar information regarding juveniles. The housing authority, however, may only obtain and use juvenile information in accordance with section 1437d(q)(1)(A). *See also id.* § 411.084(2)(B) (stating CHRI may only be disclosed or used as authorized or directed by another statute).

Although the requestor is with the housing authority, we cannot determine if she is seeking the release of CHRI of applicants or tenants for purposes of applicant screening, lease enforcement, or eviction. Nevertheless, if the submitted information relates to applicants or tenants of the housing authority and if the department determines that the requestor intends to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, then we conclude that any CHRI of adult or juvenile tenants of public housing contained in the submitted report must be released in accordance with section 1437d(q)(1) of title 42 of the United States Code and Open Records Decision No. 655.[2] *See also* 24 C.F.R. § 5.903 (describing public housing authorities' access to criminal records). In that instance, the remainder of the submitted report must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the department determines that the submitted information does not relate to housing authority applicants or tenants or that the housing authority does not intend to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, then the department must

[2]We note because the requestor may have a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from a requestor without such a right of access.

withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.[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,

Tamara H. Holland

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/jb

Ref: ID# 386234

Enc. Submitted documents

c: Requestor
(w/o enclosures)

[3]As our ruling is dispostive, we need not address your argument under section 552.108.