



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 4, 2010

Ms. Claire E. Swann  
Abernathy Roeder Boyd & Joplin P.C.  
P.O. Box 1210  
McKinney, Texas 75070

OR2010-16743

Dear Ms. Swann:

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# 399045.

The Mansfield Independent School District (the "district"), which you represent, received a request for a police report from a specified district middle school involving the requestor's daughter. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the exceptions 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 provides 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, 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.

...

(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.

Fam. Code § 58.007(c), (e), (j). 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. Fam. Code § 58.007. The submitted report involves juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of section 58.007). Therefore, section 58.007 is applicable to this report. However, a governmental body may not withhold a child's law enforcement records from a parent under section 58.007(c). *Id.* § 58.007(e). The submitted information reflects the requestor is the mother of the only juvenile offender listed in this report. Consequently, this information may not be withheld from this requestor under section 58.007. However, personally identifiable information concerning any other juvenile suspects, offenders, victims, or witnesses must be redacted pursuant to section 58.007(j)(1) of the Family Code. *See id.* § 58.007(j)(1). Thus, the district must

withhold the identifying information of juvenile witnesses which we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.<sup>1</sup> Additionally, pursuant to section 58.007(j), a governmental body may raise other exceptions to disclosure. *Id.* § 58.007(j)(2). Accordingly, we will address your arguments against disclosure of this report.

You claim the identifying information of the remaining witnesses should be withheld under sections 552.101 and 552.135 of the Government Code. Section 552.101 encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The common-law informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). In this instance, the remaining identified individuals did not make the initial report of the violation, but rather only assisted in the district's investigation. Therefore, because the remaining information does not identify informants for purposes of the informer's privilege, no remaining information may be withheld under the informer's privilege. *See* Open Records Decision No. 549 at 5 (1990) (informer's privilege only excepts information to the extent necessary to protect that informer's identity).

Section 552.135 of the Government Code provides the following:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov't Code § 552.135. Like the informer's privilege, section 552.135 protects the initial informer's identity, but does not encompass protection for witness information or statements. Accordingly, upon review, we find that none of the remaining information identifies an informer for purposes of section 552.135. Thus, the district may not withhold any of the remaining information under section 552.135 of the Government Code.

Section 552.101 of the Government Code also encompasses information made confidential by statutes, such as criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC").

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<sup>1</sup>As our ruling is dispositive for this information, we need not address your arguments under the informer's privilege or section 552.135 for the reporting juvenile.

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. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code 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. Upon review, we have marked the information that consists of CHRI generated by NCIC or TCIC. We conclude the district must withhold this marked information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.<sup>2</sup>

In summary, the district must withhold the identifying information of the juvenile witnesses we marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The district must also withhold the information we marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The remaining information must be released.<sup>3</sup>

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

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<sup>2</sup>We note the requestor can obtain her minor daughter’s CHRI directly from DPS. Gov’t Code § 411.083(b)(3).

<sup>3</sup>We note that the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the district receives another request for this information from a different requestor, the district must again seek a ruling from this office.

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,

A handwritten signature in black ink, appearing to read "Bob Davis", with a stylized flourish at the end.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tp

Ref: ID# 399045

Enc. Submitted documents

c: Requestor  
(w/o enclosures)