



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2011

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

OR2011-11912

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# 427390.

The Midland Police Department (the "department") received a request for all information related to a named person, including a specified incident. You claim the submitted information regarding the specified incident is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the first part of the request. To the extent any such information existed on the date the department received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information made confidential by other statutes, such as section 58.007 of the Family Code, which protects juvenile law enforcement records

related to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997. 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.

Fam. Code § 58.007(c). You contend the submitted report is confidential in its entirety under section 58.007(c) because it pertains to juveniles cited for the offense of minor in possession of alcohol. For purposes of section 58.007(c), a child is defined as a person ten years of age or older and under seventeen years of age at time of commission of the conduct. *Id.* § 51.02(2). The report reflects some of the individuals cited were fifteen and sixteen years old. Thus, we find this report pertains to juvenile delinquent conduct. *See id.* § 51.03(a) (defining “juvenile delinquent conduct” for the purposes of section 58.007). Therefore, we find the submitted report is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.¹

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

¹Because our ruling is dispositive, we do not address your remaining argument against disclosure.

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 that reads "Misty Haberer Barham". The signature is written in a cursive, flowing style.

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 427390

Enc. Submitted documents

c: Requestor
(w/o enclosures)