



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 6, 2011

Ms. Tiffany Bull  
Assistant City Attorney  
Arlington Police Department  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2011-14543

Dear Ms. Bull:

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# 432137 (PD Reference #4728).

The Arlington Police Department (the "department") received a request for information pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-18902 (2010). There is no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, we conclude the department must continue to rely on Open Records Letter No. 2010-18902 as a previous determination and withhold the previously ruled upon information in accordance with the prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will consider your arguments for the requested information that was not the subject of the previous ruling.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes such as section 58.007 of the Family Code, which provides in pertinent part 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.

Fam. Code § 58.007(c). 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 id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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. *See id.* § 51.02(2). You state Exhibit B is subject to section 58.007. Upon our review, however, we find report number 10-25808 within Exhibit B involves a seventeen-year old arrestee. Thus, this report is not a juvenile law enforcement record for the purposes of section 58.007, and the department may not withhold this report on this basis. *See id.* However, we find the remaining information within Exhibit B and all of Exhibit C pertains to a child engaged in delinquent conduct that occurred after September 1, 1997. As such, this information constitutes juvenile law enforcement records that are confidential pursuant to section 58.007(c). It does not appear that any of the exceptions to confidentiality under section 58.007 apply to this information in this instance. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.<sup>1</sup>

We note some of the information within report number 10-25808 is subject to common-law privacy. Section 552.101 of the Government Code also encompasses the common-law right

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments for this information.

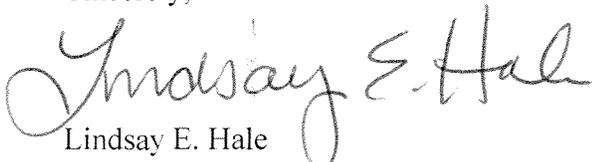
of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type of information considered intimate or 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. *Id.* at 683. We note the doctrine of common-law privacy generally protects the identifying information of juvenile offenders. See Open Records Decision No. 394 (1983); cf. Fam. Code § 58.007. As such, we conclude the department must withhold the information we have marked within report number 10-25808 under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must continue to rely on Open Records Letter No. 2010-18902 as a previous determination and withhold the previously ruled upon information in accordance with the prior ruling. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold the information we have marked in report number 10-25808 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.

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 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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/akg

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)