



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2011

Mr. B. Chase Griffith
For City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-17096

Dear Mr. Griffith:

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# 436623 (ORR# 10-4312).

The McKinney Police Department (the "department"), which you represent, received a request for call for service reports and corresponding incident reports pertaining to a specified address. You state the department has provided some of the requested call for service reports to the requestor. You claim the submitted call for service and incident reports are 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. This exception encompasses information made confidential by other statutes, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Section 58.007 provides, in 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). 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 at the time of the reported conduct. *See id.* § 51.02(2). The submitted call for service report number 2009-009215 and its corresponding incident report number 09-030152 involve a sixteen-year-old runaway. Thus, we find the reports involve juvenile conduct indicating a need for supervision. *See id.* § 51.03(b)(3) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from the child’s home without the consent of the child’s parent or guardian for a substantial length of time or without intent to return”). Therefore, we find the reports are confidential under section 58.007(c) of the Family Code. It does not appear any of the exceptions in section 58.007 of the Family Code apply. Furthermore, the requestor has not provided any information indicating she has a statutory right of access to the reports. As such, the department must withhold call for service report number 2009-009215 and incident report number 09-030152 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 also encompasses the doctrine of common-law 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 types of information considered highly 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. You assert some of the remaining information is protected by common-law privacy. Upon review, we find some of the information, which we have marked, is highly intimate or embarrassing and of no legitimate public concern. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold call for service report number 2009-009215 and incident report number 09-030152 under section 552.101 of the Government Code in

conjunction with section 58.007(c) of the Family Code. The department must withhold the information we have marked 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, 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 436623

Enc. Submitted documents

c: Requestor
(w/o enclosures)