



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2011

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664

OR2011-17131

Dear Ms. Camp-Lee:

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# 436975.

The Round Rock Police Department (the "department"), which you represent, received a request for a specified incident report. You claim the requested information is 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 section encompasses information made confidential by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides for the confidentiality of juvenile law enforcement records related to delinquent conduct that occurred on or after September 1, 1997. *See* Fam. Code § 51.03 (defining "delinquent conduct"). Section 58.007(c) provides the following:

(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.

Id. § 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. *See id.* § 51.02(2). Upon review, we agree the submitted information constitutes law enforcement records of a juvenile who engaged in delinquent conduct after September 1, 1997. You do not inform us, and it does not appear, that any of the exceptions in section 58.007 apply to this information. Thus, the submitted information is confidential under section 58.007(c) of the Family Code.

You assert that because the requestor is an investigator with the Texas State Board of Pharmacy (the “board”), section 411.122(a) of the Government Code provides the requestor a right of access to criminal history record information (“CHRI”) contained in the submitted records. Section 411.122 provides that a state agency licensing or regulating members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the Texas Department of Public Safety (“DPS”) CHRI that relates to an applicant for or holder of a license, or a person who requests a determination of eligibility for a license, from the agency. *See Gov’t Code* § 411.122(a). The board is one of the agencies subject to section 411.122. *See id.* § 411.122(d)(14). An entity authorized to obtain from DPS CHRI related to a person and maintained by DPS is also authorized to obtain CHRI from any other criminal justice agency in the state related to that person. *See id.* § 411.087(a).

We note, however, the requestor states one of the offenders is a pharmacy technician, an occupation regulated, but not licensed, by the board. *See Occ. Code* §§ 568.001 (pharmacy technician must pass certification examination), .002 (pharmacy technician must register with board annually or biennially). The requestor does not state one of the offenders is a license holder or applicant or that the offender has requested a determination of eligibility for a license from the board. Thus, section 411.122(a) is inapplicable in this instance. Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

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,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 436975

Enc. Submitted documents

c: Requestor
(w/o enclosures)