



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2011

Ms. Natasha Brooks
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2011-17151

Dear Ms. Brooks:

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# 438237.

The Midland Police Department (the "department") received a request for information pertaining to two specified investigations. You state the department has released incident report number MP110903157. You claim the submitted 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes, including section 58.007 of the Family Code. Section 58.007(c) reads as follows:

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). The submitted call sheet for incident report number MP110903694 involves alleged juvenile delinquent conduct occurring after September 1, 1997. *See id.* § 51.02(2) (for purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age). None of the exceptions in section 58.007 appears to apply. Therefore, the department must withhold the submitted call sheet for incident report number MP110903694 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.¹ You also seek to withhold the call sheet for incident report number MP110903157. However, you have not established this information involves alleged juvenile delinquent conduct occurring after September 1, 1997. Thus, this information is not confidential under section 58.007, and the department may not withhold it from release under section 552.101 on that ground.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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). The types 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. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). You assert the call sheet for incident report number MP110903157 is confidential under common-law privacy. However, upon review, we find you have not established this information is highly intimate or embarrassing. Therefore, the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground. Instead, the

¹As our ruling is dispositive, we do not address your other argument to withhold this information.

department must release the call sheet for incident report number MP110903157 to the requestor.

To conclude, the department must withhold the call sheet for incident report number MP110903694 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must, however, release the call sheet for incident report number MP110903157 to the requestor.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 438237

Enc. Submitted documents

c: Requestor
(w/o enclosures)