



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 6, 2012

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

OR2012-00270

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# 441706 (ORR# 10-4513).

The McKinney Police Department (the "department"), which you represent, received a request for information, including a specified incident, pertaining to a named individual. You claim the submitted incident report 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 exception encompasses information protected 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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

Fam. Code § 58.007(c), (e). 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 incident report number 11-003044 involves, among other things, fifteen-year-old and sixteen-year-old individuals cited for disorderly conduct. Thus, we find the report involves juvenile delinquent conduct. *See id.* § 51.03(a) (defining juvenile “delinquent conduct” for purposes of section 58.007). Therefore, we find report number 11-003044 is confidential under section 58.007(c) of the Family Code.

We note the requestor is a representative of OMNIPLEX World Services Corporation (“OMNIPLEX”). In her request for information, the requestor states OMNIPLEX “is contracted with a United States Government agency to conduct background investigations on applicants for positions requiring access to sensitive information.” The requestor has also included a United States Office of Personnel Management (“OPM”) Authorization for Release of Information signed by the individual named in the request. The requestor has not, however, explained with which federal agency OMNIPLEX is contracted or that it has a right of access to the requested information under a specific provision of law. Thus, we are unable to determine whether or not any federal or state law authorizes the requestor to receive any of the information at issue. *See* 5 U.S.C. § 9101(b)(1), (c) (OPM has right of access to criminal history record information of state and local criminal justice agencies when investigation is conducted with consent of individual being investigated); 5 C.F.R. pts. 731, 732, 736 (authorizing OPM to investigate applicants for federal employment); *Mittleman v. Office of Pers. Mgmt.*, 76 F.3d 1240, 1243 (D.C. Cir. 1996) (OPM authorized to perform background investigations of prospective federal employees). Therefore, the department must withhold incident report number 11-003044 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](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 that reads "Leah B. Wingerson".

Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 441706

Enc. Submitted documents

c: Requestor  
(w/o enclosures)