



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2012

Mr. B. Chase Griffith
For the Town of Little Elm
Brown & Hofmeister, LLP
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2012-01971

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# 444883.

The Little Elm Police Department (the "department"), which you represent, received a request for all complaints and investigative determinations regarding a specified incident, all internal affairs records pertaining to a named individual, and all incident reports and 9-1-1 calls during a specified time period pertaining to two specified addresses. You state you have released some responsive information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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. Section 552.101 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. The relevant language of section 58.007 reads:

(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 conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03(a) (defining “delinquent conduct”). For purposes of section 58.007, a “child” is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). You state six of the submitted reports are confidential under section 58.007. Upon review, we find event reports 11-0034143 and 11-0122130 and incident report 11-00000257 reflect delinquent conduct by children and are subject to section 58.007. Further, it does not appear that any of the exceptions in section 58.007 apply. Accordingly, we find event reports 11-0034143 and 11-0122130 and incident report 11-00000257 are confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. However, because the remaining reports you seek to withhold on this basis do not involve juvenile delinquent conduct or conduct indicating a need for supervision for purposes of the section 58.007 of the Family Code, we conclude that section 58.007(c) is not applicable to this information. Thus, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.007.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than a conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2–3 (1986). You state a portion of the remaining submitted information relates to an investigation that has concluded and did not result in a conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) is applicable to event report 11-000972.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to

the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold event report 11-000972 under section 552.108(a)(2) of the Government Code.¹

Section 552.101 of the Government Code 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 type 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. Furthermore, this office has also found common-law privacy generally protects the identifying information of juvenile offenders. See Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007. Upon review, we find the remaining information we have marked is highly intimate or embarrassing and not of legitimate concern to the public. Accordingly, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold event reports 11-0034143 and 11-0122130 and incident report 11-00000257 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the department may withhold event report 11-000972 under section 552.108(a)(2) of the Government Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

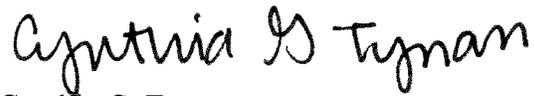
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 black ink that reads "Cynthia G. Tynan". The signature is written in a cursive style with a large, stylized "C" and "T".

Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 444883

Enc. Submitted documents

c: Requestor
(w/o enclosures)