



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 9, 2012

Ms. Meredith Ladd  
For City of McKinney  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2012-02088

Dear Ms. Ladd:

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# 445062 (McKinney Ref. No. 10-4667).

The McKinney Police Department (the "department"), which you represent, received a request for information pertaining to specified incidents. 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 section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). Section 58.007 provides:

(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.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

*Id.* § 58.007(c), (e), (j)(2); *see also id.* § 51.02(2) (defining "child" as a person who is ten years of age or older and younger than seventeen years of age at time of commission of crime). You assert report number 08-002488 involves an allegation of juvenile delinquent conduct or conduct in need of supervision. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). Upon review, we agree report number 08-002488 is subject to section 58.007(c).

You state the requestor may be the juvenile offender listed in the report or a representative of the United States Army (the "Army"). Therefore, we must rule conditionally. If the requestor is the juvenile at issue, section 58.007(e) allows him access to his own law enforcement records. *Id.* § 58.007(e). In that situation, the report may not be withheld from the requestor under section 552.101 in conjunction with 58.007 of the Family Code. However, section 58.007(j)(2) provides, notwithstanding section 58.007(e), any information

that is excepted from required disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, if the requestor is the juvenile offender, we will address your claims under section 552.108 of the Government Code for report number 08-002488.

In the alternative, if the requestor is a representative of the Army, the request indicates the information is being sought for an enlistee in the Army. The United States Department of Defense (the “DoD”) is authorized to perform background investigations of persons seeking to enlist to determine the eligibility of applicants for acceptance into armed services. 5 U.S.C. § 9101(b)(1)(C); *see also id.* § 9101(a)(6)(A) (DoD is a covered agency for purposes of section 9101). The Army has a right to the criminal history record information (“CHRI”) of state and local criminal justice agencies when its investigation is conducted with the consent of the individual being investigated. *See id.* § 9101(b)(1), (c); *see also* 10 U.S.C. § 111(b)(6) (DoD includes the Department of the Army). CHRI is defined as “information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision and release” but does not include “identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system” or “records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.” 5 U.S.C. § 9101(a)(2).

Federal law provides the Army’s right of access to CHRI preempts state confidentiality provisions. *Id.* § 9101(b)(4) (section 9101 “shall apply notwithstanding any other provision of law . . . of any State”). We conclude the Army’s right of access under federal law preempts the state confidentiality provision you claim. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *see also La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). However, federal law also provides the Army’s right of access is contingent on receiving written consent from the individual under investigation for the release of such CHRI. *See* 5 U.S.C. § 9101(c).

Although the Army may have made the instant request for information for recruiting purposes, we have no indication the individual under investigation provided the Army with a signed authorization for the release of the information at issue. Nevertheless, if the instant request was made for recruiting purposes, and if the Army provides a signed written consent for release from the individual being investigated, then the department must release CHRI from report number 08-002488 to the Army. In that event, the department must withhold the remainder of report number 08-002488 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the instant request was not made for recruiting purposes or if the Army does not provide written consent for release, then the department must withhold report number 08-002488 in its entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code.

Next, we address section 552.108 of the Government Code for report number 08-002488, if the requestor is the juvenile offender, and the remaining reports. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that 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 the submitted reports have concluded in results other than convictions or deferred adjudications. Based on these representations, we agree section 552.108(a)(2) is applicable to the submitted reports.

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*). Thus, if the requestor is the juvenile offender in report number 08-002488, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.

However, if the requestor is a representative of the Army, then the requestor may, as previously noted, have a right of access to the CHRI of the individual at issue with the individual's consent. 5 U.S.C. § 9101(b)(1), (4), (c). Therefore, if the requestor is making the request for recruiting purposes, and if the Army provides a signed written consent for release from the individual being investigated, the department must release CHRI from the remaining reports to this requestor and, with the exception of basic information, may withhold the remaining information under section 552.108(a)(2) of the Government Code. Otherwise, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code.<sup>1</sup>

In summary, if the requestor is the juvenile offender listed in report number 08-002488, then, with the exception of basic information, the department may withhold the submitted information pursuant to section 552.108(a)(2) of the Government Code. However, if the requestor is an Army recruiter making the request for recruiting purposes and the Army provides a signed written consent for release from the individual being investigated, the department must release the CHRI from the submitted information to the Army. In that case, the department must withhold the remainder of report number 08-002488 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code and, with the exception of basic information, may withhold the remaining information

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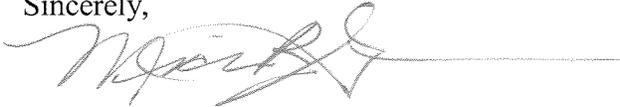
<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure under section 552.108(b)(2) of the Government Code.

under section 552.108(a)(2) of the Government Code. Finally, if the requestor is an Army representative who does not provide a written consent for release, then the department must withhold report number 08-002488 in its entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code. Further, with the exception of the basic information, the department may withhold the remaining submitted information under section 552.108(a)(2) of the Government Code.<sup>2</sup>

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,



Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/em

Ref: ID# 445062

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the requestor in this case may have a special right of access to the information being released. If the department receives another request for this information from an individual other than this requestor, the department must again seek a decision from this office.