



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2012

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2012-04818

Dear Ms. Graham:

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# 449448.

The Mesquite Police Department (the "department") received a request for a specified arrest report. 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 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:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under [the Act] or other law.

Id. § 58.007(c) (e), (j); *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). The submitted report involves delinquent conduct by a juvenile, which occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" for purposes of Fam. Code § 58.007). However, as the child suspect's step-father, the requestor might have a right of access to information otherwise made confidential by section 58.007(c). *See id.* § 58.007(e) (law enforcement records may be inspected by child's guardian). As we are unable to determine whether the requestor is the juvenile suspect's guardian, we must rule conditionally. If the department determines the requestor is not a guardian of the juvenile suspect, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the department determines the requestor is a guardian of the juvenile suspect, the department may not withhold these records from the requestor on the basis of section 58.007(c). However, section 58.007(j)(1) provides any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). A juvenile victim or witness for purposes of section 58.007(j)(1) is a person who is under eighteen years of age.

Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The remaining information you have marked does not identify a juvenile victim or witness and it may not be withheld under section 552.101 of the Government Code on that basis. We note, however, section 58.007(j)(2) of the Family Code provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007 (j)(2). Accordingly, we will address your remaining argument against disclosure.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10–12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov’t Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). Upon review, we find the information we have marked consists of confidential CHRI. The department must withhold this information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The remaining information you have marked does not consist of confidential CHRI, and the department may not withhold it under section 552.101 of the Government Code on that basis.

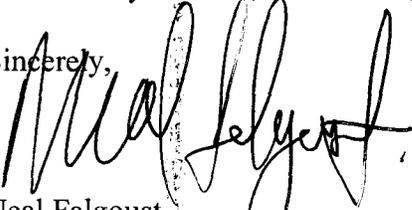
In summary, if the department determines the requestor is not a guardian of the juvenile suspect, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the department determines the requestor is a guardian of the juvenile suspect, it must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code and section 411.083 of the Government Code. The remaining information must be released.¹

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.

¹We note the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this same information from a different requestor, it must again seek a ruling from this office.

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) 673-6339. 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, appearing to read 'Neal Falgoust', written over the word 'Sincerely,'.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 44-448

Enc. Submitted documents

c: Requestor
(w/o enclosures)