



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 5, 2013

Ms. Rachel L. Lindsay
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2013-02032

Dear Ms. Lindsay:

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# 478075 (ORR # 10-6380).

The McKinney Police Department (the "department"), which you represent, received a request for information pertaining to the requestor's son. You claim the requested 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.

Initially, we note you have redacted some addresses and phone numbers from the submitted documents. However, you do not assert, nor does our review of our records indicate, the department has been authorized to withhold any of the redacted information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000) (listing elements of first type of previous determination under section 552.301(a)). Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be

released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested" or representative sample), .302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. 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.

...

(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.

Fam. Code § 58.007(c), (e), (j)(2). Under section 58.007, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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). Report numbers 09-036034, 11-006419, 12-001819, 12-003726, 12-008043, and 12-008205 involve juveniles engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Therefore, report numbers 09-036034, 11-006419, 12-001819, 12-003726, 12-008043, and 12-008205 are subject to section 58.007 of the Family Code. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to report numbers 11-006419, 12-001819, and 12-008205. Accordingly, report numbers 11-006419, 12-001819, and 12-008205 must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

However, the requestor is a parent of the juvenile offender listed in report numbers 09-036034, 12-003726, and 12-008043. Accordingly, information pertaining to the requestor’s child may not be withheld under section 552.101 of the Government Code on the basis of section 58.007(c). *See id.* § 58.007(e). However, pursuant to section 58.007(j)(2), we will address your claim under section 552.108 of the Government Code for report numbers 09-036034, 12-003726, and 12-008043. *See id.* § 58.007(j)(2).

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy 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 type 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.

You assert report number 12-007407 is subject to common-law privacy. We agree portions of report number 12-007407 are highly intimate or embarrassing and of no legitimate public interest. However, the requestor is a parent of the minor with the privacy interest and thus has a special right of access to information that would ordinarily be withheld to protect the child’s common-law privacy interests. *See Gov’t Code* § 552.023(a) (person or a person’s authorized representative has special right of access, beyond the right of general public, to information held by a governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, none of report number 12-007407 may be withheld under section 552.101 on the basis of common-law privacy.

Section 552.108(a)(2) of the Government Code 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 has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 09-036034, 12-003726, 12-008043, and 12-007407 relate to concluded cases that did not result in convictions or deferred adjudications.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 made public by *Houston Chronicle*). We note basic information includes the identity of the complainant but does not include the identity of a witness or victim, unless the victim is also the complainant. The department must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. Thus, with the exception of basic information, the department may withhold report numbers 09-036034, 12-003726, 12-008043, and 12-007407 pursuant to section 552.108(a)(2) of the Government Code.

In summary, the department must withhold report numbers 11-006419, 12-001819, and 12-008205 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of basic information, which must be released, the department may withhold report numbers 09-036034, 12-003726, 12-008043, and 12-007407 pursuant to section 552.108(a)(2) of the Government Code.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.

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

¹Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

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 "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 478075

Enc. Submitted documents

c: Requestor
(w/o enclosures)