



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

February 8, 2013

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2013-02271

Dear Ms. Byles:

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# 478303 (CFW PIR No. W021620).

The City of Fort Worth (the "city") received a request for "[p]olice records and arrests made" at a specified school during a specified time period. You state the city will release some information to the requestor. 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 information that other statutes make confidential, such as section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Open Records Decision No. 680 at 4 (2004); *see also* Fam. Code §§ 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision"), .02(2) (defining "child" as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). Section 58.007 provides in relevant 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.

Fam. Code § 58.007(c). Upon review, we agree report numbers 11-118601, 12-19399, 12-30015, 12-50392, 12-50663, 12-96351, 110937772, 120253186, and 120417692 consist of law enforcement records that involve juveniles engaged in delinquent conduct that occurred after September 1, 1997. Furthermore, it does not appear that any of the exceptions in section 58.007 apply in this instance. Accordingly, report numbers 11-118601, 12-19399, 12-30015, 12-50392, 12-50663, 12-96351, 110937772, 120253186, and 120417692 are confidential under section 58.007(c) of the Family Code, and the city must withhold these reports under section 552.101 of the Government Code.

However, we are unable to determine the age of the offenders at issue in report numbers 120795056 and 120919679. Therefore, we must rule conditionally. Thus, to the extent report numbers 120795056 and 120919679 constitute records of juveniles engaged in delinquent conduct who were ten years of age or older and under seventeen years of age at the time of the commission of the crimes, these reports 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, to the extent report numbers 120795056 and 120919679 pertain to offenders who were not ten years of age or older and under seventeen years of age at the time of the commission of the crimes, these reports are not confidential pursuant to section 58.007(c) and may not be withheld under section 552.101 on that basis. Further, we find you have failed to establish any of the remaining reports involve alleged juvenile delinquent conduct or conduct indicating a need for supervision occurring after September 1, 1997. Thus, none of the remaining reports are confidential under section 58.007, and the city may not withhold report numbers 110808119 or 120089094 under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses the common-law right of 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 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find some of the information in report number 110808119 is highly intimate or embarrassing and not of legitimate concern. Thus, the city must withhold the information you have marked, and the additional information we have marked, in report number 110808119 under section 552.101 of the Government Code in conjunction with common-law privacy. In addition, to the extent report number 120795056 pertains to an offender who was not ten years of age or older and under seventeen years of age at the time of the commission of the crime, the city must withhold the information we have marked in report number 120795056 under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information you seek to withhold is highly intimate or embarrassing and of no legitimate public interest. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information in report number 110808119 is subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release.<sup>1</sup> Gov't Code § 552.130(a)(2). Accordingly, the city must withhold the motor vehicle record information we have marked in report number 110808119 under section 552.130 of the Government Code.

In summary, the city must withhold report numbers 11-118601, 12-19399, 12-30015, 12-50392, 12-50663, 12-96351, 110937772, 120253186, and 120417692 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. To the extent report numbers 120795056 and 120919679 constitute records of juveniles engaged in delinquent conduct who were ten years of age or older and under seventeen years of age at the time of the commission of the crimes, the city must withhold these reports under section 552.101 of the Government Code in conjunction with

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 58.007(c) of the Family Code. The city must withhold the information you have marked, and the additional information we have marked, in report number 110808119 under section 552.101 of the Government Code in conjunction with common-law privacy. In addition, to the extent report number 120795056 pertains to an offender who was not ten years of age or older and under seventeen years of age at the time of the commission of the crime, the city must withhold the information we have marked in report number 120795056 under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked in report number 110808119 under section 552.130 of the Government Code. The city must release the remaining information.

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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 478303

Enc. Submitted documents

c: Requestor  
(w/o enclosures)