



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2013

Ms. Linda Rhodes
City Secretary
City of Lake Worth
3805 Adam Grubb
Lake Worth, Texas 76135-3509

OR2013-05144

Dear Ms. Rhodes:

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# 482615.

The Lake Worth Police Department (the "department") received a request for a specified incident report. You claim that 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 other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007 provides, in pertinent part, as follows:

(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 [the Act], or other law.

Fam. Code § 58.007(c), (e), (j)(2). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find the submitted information involves a juvenile engaged in delinquent conduct occurring after September 1, 1997; therefore, the submitted information is subject to section 58.007. We note the requestor may be the juvenile suspect listed in the report. If the requestor is not the juvenile suspect listed in the report, then the submitted information must be withheld in its entirety under section 552.101 in conjunction with section 58.007(c). However, to the extent the requestor is the juvenile suspect, he may inspect or copy any law enforcement records concerning himself under section 58.007(e). *Id.* § 58.007(e). We note, however, section 58.007(j) 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 under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5.

You state some of the information reveals the identities of individuals who reported a violation of criminal law to the department, which is responsible for enforcing criminal law. We note the violation carries criminal penalties. We have no indication the subject of the complaint is aware of the identity of the informer. Upon review, we conclude the department has demonstrated the applicability of the common-law informer's privilege to portions of the information, which we have marked. Therefore, the department may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have failed to demonstrate how any of the remaining information you have marked consists of the identifying information of an individual who made the initial report of a criminal violation to the department for purposes of the informer's privilege. Accordingly, the department may not withhold any portion of the remaining information at issue under section 552.101 on that basis.

In summary, if the requestor is not the juvenile suspect, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. If the requestor is the juvenile suspect listed in the report, then the department may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege and 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, 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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a large, stylized flourish at the end.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 482615

Enc. Submitted documents

c: Requestor
(w/o enclosures)