



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2013

Ms. Donna L. Johnson
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2013-10593

Dear Ms. Johnson:

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# 490974 (Manvel Reference No. COM13-003).

The Manvel Police Department (the "department"), which you represent, received a request for an accident report, CAD Event report, and incident report related to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code and the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. We have considered your arguments and reviewed the submitted information.

You contend the submitted high school transcripts and discipline records are excepted by FERPA. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.¹ Consequently, education records that are responsive to a request for information under the Act should not be submitted to this office in unredacted form, that is, in a form in which "personally

¹A copy of this letter may be found on the Office of the Attorney General's website: http://www.oag.state.tx.us/opinopen/og_resources.shtml.

identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information").

We note the department is not an educational agency or institution for purposes of FERPA. In this instance, however, it appears the department may have obtained the transcripts and discipline records from the educational institutions that created those documents. FERPA contains provisions that govern access to education records that were transferred by an educational agency or institution to a third party. To the extent the information at issue was obtained from the educational institutions, so as to be governed by FERPA, we will not address the applicability of FERPA to this information, because our office is prohibited from reviewing education records to determine whether appropriate redactions have been made under FERPA. Such determinations under FERPA must be made by the educational authorities from which education records were obtained. Thus, the department should contact any educational institutions from which the transcripts and discipline records were obtained, as well as the DOE, regarding the applicability of FERPA to this information. To the extent the transcripts and discipline records are not governed by FERPA, we will address your remaining arguments against their disclosure.

Section 552.101 of the Government Code exempts 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). The relevant portion of 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.

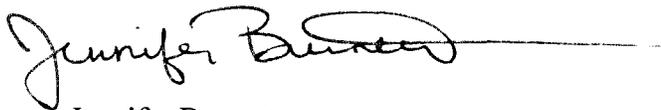
Id.; *see also id.* § 51.02(2) (defining "child" as a person who is ten years of age or older and younger than seventeen years of age). Upon review, we find the submitted information

involves delinquent conduct by a child that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" for purposes of section 58.007). Further, it does not appear any of the exceptions in section 58.007 apply. Therefore, the submitted information is confidential under section 58.007(c) of the Family Code, and the department must withhold it under section 552.101 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, reading "Jennifer Burnett", followed by a horizontal line extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 490974

Enc. Submitted documents

c: Requestor
(w/o enclosures)

