



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2013

Ms. Halfreda Anderson-Nelson
Senior Assistant General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2013-14995

Dear Ms. Anderson-Nelson:

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# 497673 (DART ORR# 9988).

Dallas Area Rapid Transit ("DART") received a request for a specified police report. You claim some of 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. This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which reads 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.

Fam. Code § 58.007(c). 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). We note section 58.007(c) applies only to law enforcement records that involve a juvenile as a suspect, offender, or defendant. Section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party. The information at issue involves delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). However, we are unable to determine the age of the offender at issue. Therefore, we must rule conditionally. Thus, if the submitted information constitutes a record of a juvenile engaged in delinquent conduct who was ten years of age or older and under seventeen years of age at the time of the conduct, then the submitted information is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. However, if the submitted information pertains to an offender who was not ten years of age or older and under seventeen years of age at the time of the conduct, then the submitted information is not confidential pursuant to section 58.007(c) and may not be withheld under section 552.101 on that basis. In that instance, we will consider your remaining argument under section 552.101 of the Government Code against disclosure of the information.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See 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 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.* 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, DART must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have

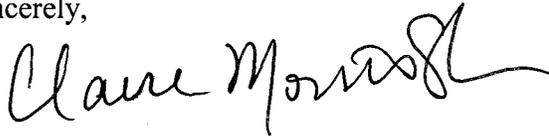
not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, if the submitted information constitutes a record of a juvenile engaged in delinquent conduct who was ten years of age or older and under seventeen years of age at the time of the conduct, then DART must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the submitted information pertains to an offender who was not ten years of age or older and under seventeen years of age at the time of the conduct, then DART must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy 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.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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 497673

Enc. Submitted documents

c: Requestor
(w/o enclosures)