



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2013

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2013-15488

Dear Mr. Mann:

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# 498660 (GCA 13-0413).

The Garland Police Department (the "department") received a request for all incident and arrest reports for twenty-eight service calls at a specified address. You state you have identified five incident reports responsive to the request.¹ You further state you have released three of the responsive reports to the requestor. You claim the remaining two reports are 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 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 made confidential by other statutes such as section 58.007 of the Family Code. Section 58.007 makes confidential the law enforcement records of a juvenile who, on or after September 1, 1997, engaged in delinquent conduct or conduct indicating a need for supervision. *See* Fam. Code §§ 58.007, 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). The relevant language of section 58.007(c) reads as follows:

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(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 Subchapter B.

Id. § 58.007(c). You claim report number 2008R002259 is confidential under section 58.007 of the Family Code. We have reviewed this information and agree that it involves allegations that a juvenile engaged in conduct indicating a need for supervision after September 1, 1997. *See id.* § 51.02(2) (providing that in title 3 of Family Code, “child” means person who is ten years of age or older and under seventeen years of age). Thus, the information in report number 2008R002259 is subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, report number 2008R002259 is confidential in its entirety in accordance with section 58.007(c) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual’s privacy. You seek to withhold report number 2008R030396 in its entirety under common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which report number 2008R030396 must be withheld in its entirety on the basis of common-law privacy. Accordingly, the department may not withhold report number 2008R030396 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

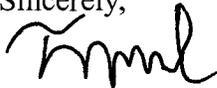
However, upon review, we find the information we have marked in report number 2008R030396 is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the department must withhold the information we have marked in report number 2008R030396 under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold report number 2008R002259 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the information we have marked in report number 2008R030396 under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 498660

Enc. Submitted documents

c: Requestor
(w/o enclosures)