



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2013

Mr. John R. Batoon
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2013-15888

Dear Mr. Batoon:

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# 503742 (13-1026-3249).

The El Paso Police Department (the "department") received a request for information related to a specified incident. You claim the requested 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, such as section 58.007 of the Family Code, which 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:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under [the Act], or other law.

Fam. Code § 58.007(c), (e), (j). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03 (defining "delinquent conduct"). 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 incident. *See id.* § 51.02(2). The submitted information involves juveniles engaged in delinquent conduct that occurred after September 1, 1997. As such, this information is confidential under section 58.007(c) of the Family Code.

However, in this instance, the requestor is the authorized representative of one of the juvenile offenders listed in the information at issue. Therefore, this requestor has a right to inspect information concerning her client under section 58.007(e). *Id.* § 58.007(e). Accordingly, the department may not withhold the submitted information from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, any personally identifiable information concerning other juvenile suspects,

offenders, victims, or witnesses must be redacted under section 58.007(j)(1). *See id.* § 58.007(j)(1). Accordingly, the department must withhold the identifying information of the other juveniles pursuant to section 552.101 of the Government Code in conjunction with section 58.007(j)(1). Additionally, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or law must be redacted. *Id.* § 58.007(j)(2). Thus, we will address your other arguments for the remaining information.

Section 552.130 of the Government Code 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. *See Gov't Code* § 552.130(a)(2). Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.¹

We understand you to assert the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy. Section 552.101 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. Upon review, we find none of the remaining information is private. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

In summary, the department must withhold the identifying information of the juveniles other than the requestor's client pursuant to section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must release the remaining information.²

¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See Gov't Code* § 552.130(d), (e).

²We note this requestor has a right of access to the information being released, which is confidential with respect to the general public. Gov't Code § 58.007(e). Therefore, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 503742

Enc. Submitted documents

c: Requestor
(w/o enclosures)