



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2014

Mr. Daniel Ortiz
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2014-07520

Dear Mr. Ortiz:

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# 521688 (El Paso Case No. 14-1026-4083).

The El Paso Police Department (the "department") received a request for a specified incident report. You claim 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, such as section 58.007 of the Family Code. 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 Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j)(2). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). 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 agree the submitted information constitutes a law enforcement record that involves a juvenile offender so as to fall within the scope of section 58.007(c). Accordingly, the submitted information is generally subject to section 58.007(c).

However, the requestor may be the authorized representative of the individual at issue. As we cannot determine whether the requestor is this individual's authorized representative, we must rule conditionally. If the requestor is not the authorized representative of the individual at issue, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the requestor is the authorized representative of the individual at issue, then she has a right to inspect information concerning this juvenile under section 58.007(e). *Id.*

§ 58.007(e). However, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be withheld. *See id.* § 58.007(j)(2). Thus, we will address your remaining argument against disclosure.

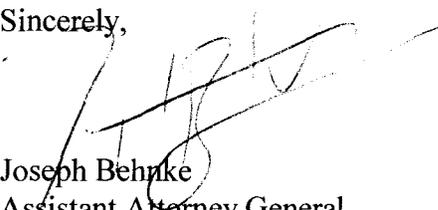
Section 552.101 also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *See id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find no portion of the submitted information constitutes highly intimate or embarrassing information of no legitimate public concern. Accordingly, the department may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the requestor is not the authorized representative of the juvenile at issue, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the requestor is the authorized representative of the individual at issue, the department must release the submitted information to the requestor pursuant to section 58.007(e) of the Family Code.

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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 521688

Enc. Submitted documents

c: Requestor
(w/o enclosures)