



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2014

Ms. Sarah R. Martin
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2014-12691

Dear Ms. Martin:

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# 530007 (APD Reference No. 15347).

The Arlington Police Department (the "department") received a request for three specified police reports pertaining to a named individual. 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. Section 552.101 encompasses information protected by other statutes. 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) of the Family Code. Fam. Code § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Section 58.007 provides in relevant part:

(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.

Id. § 58.007(c), (e), (j)(2). For purposes of section 58.007(c), a "child" is a person ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). You argue section 58.007 for the submitted information. Upon review, we find you have failed to demonstrate how case number 14-19596 pertains to a child engaged in delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03(a), (b). Thus, case number 14-19596 is not subject to section 58.007(c). However, we agree case numbers 14-21880 and 14-20599 involve a child engaged in conduct indicating a need for supervision that occurred after September 1, 1997. Thus, case numbers 14-21880 and 14-20599 are subject to section 58.007(c). However, the requestor may be the guardian of the juvenile offender listed in case numbers 14-21880 and 14-20599. If the requestor is not the guardian of the juvenile offender listed in case numbers 14-21880 and 14-20599, then these case numbers must be withheld in their entirety under section 552.101 of the

Government Code in conjunction with section 58.007(c) of the Family Code. However, if the requestor is the guardian of the juvenile offender listed in case numbers 14-21880 and 14-20599, then she may inspect or copy this information under section 58.007(e). *Id.* § 58.007(e). In that event, the department may not withhold case numbers 14-21880 and 14-20599 from this requestor under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. However, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your remaining argument against disclosure for case numbers 14-21880 and 14-20599 as well as the remaining report.

Section 552.101 of the Government Code 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. In this instance, the information reveals that the requestor knows the identity of the individual involved as well as the nature of the information in case number 14-19596. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must generally withhold the case number 14-19596 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, the requestor may be the guardian of the individual whose privacy interest is implicated. If the requestor is the guardian of this individual, she has a right of access to information that would ordinarily be withheld to protect the subject individual's common-law privacy interests. *See Gov't Code* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987). Therefore, to the extent the requestor is the guardian of the individual whose privacy interest is implicated in case number 14-19596, she has a right of access to this information pursuant to section 552.023 of the Government Code, and case number 14-19596 may not be withheld from her pursuant to common-law privacy. If the requestor is not the legal guardian of the individual whose privacy interest is implicated in case number 14-19596, then it must be withheld in its entirety under section 552.101 in conjunction with common-law privacy. Additionally, we find none of the remaining information is highly intimate or embarrassing and of no

legitimate public interest; therefore, no portion of the remaining information may be withheld under section 552.101 on the basis of common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, if the requestor is the guardian of the individual whose privacy interest is implicated in case number 14-19596, the department must withhold the information we marked under section 552.130 of the Government Code.

In summary, if the requestor is not the guardian of the juvenile listed in case numbers 14-21880 and 14-20599, then case numbers 14-21880 and 14-20599 must be withheld in their entireties under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the requestor is not the guardian of the individual whose privacy interest is implicated in case number 14-19596, then it must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the guardian of the individual whose privacy interest is implicated in case number 14-19596, then the department must withhold the information we marked under section 552.130 of the Government Code and 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 530007

Enc. Submitted documents

c: Requestor
(w/o enclosures)