



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2009

Mr. Rick Miller
Bell County Attorney
P.O. Box 1127
Belton, Texas 76513

OR2009-13745

Dear Mr. Miller:

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# 358979.

The Bell County Attorney's Office (the "county attorney") received a request for two case files and all other records pertaining to a named individual maintained by the county attorney, and court records which are not open to the public. We note you have redacted some social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that 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." This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. 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. *See* Fam. Code § 51.02(2). The relevant language of section 58.007 reads as follows:

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

(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, D, and E.

Fam. Code § 58.007(c). We have reviewed the information at issue and we find that a portion of it constitutes juvenile law enforcement records for the purpose of section 58.007. You do not indicate that any of the exceptions in section 58.007 apply. Thus, the information we have marked is confidential pursuant to section 58.007, and the county attorney must withhold the marked information under section 552.101 of the Government Code.²

Section 552.101 also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. This office has determined that common-law privacy generally protects the identities of juvenile offenders. *See* Open Records Decision No. 384 (1983); *cf.* Fam. Code § 58.007(c). Therefore, based on our review of the remaining information, we conclude that the county attorney must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

In summary, the county attorney must withhold the information we have marked under section 552.101 in conjunction with section 58.007 of the Family Code. The county attorney

²As our ruling on this issue is dispositive, we need not address your argument under section 58.005 of the Family Code.

must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The remaining information must be released.³

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/eeg

Ref: ID# 358979

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³The requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(a)(person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Because such information may be confidential with respect to the general public, if the county attorney receives another request for this information from a different requestor, the county attorney must again seek a ruling from this office.