



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2011

Mr. B. Chase Griffith
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-09853

Dear Mr. Griffith:

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# 424189 (ORR# 10-3707).

The McKinney Police Department (the "department"), which you represent, received a request for information pertaining to three named individuals at a specified location during a specified period of time. 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." 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.

Fam. Code § 58.007(c), (e). For purposes of section 58.007(c), a "child" is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). 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"). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Upon review, we find the information we have marked involves juvenile delinquent conduct that occurred after September 1, 1997. Therefore, this information is subject to section 58.007(c). However, we note the requestor states she is the case worker for the child's mother and, thus, may be acting as the authorized representative of the child's mother. Accordingly, if the requestor is the authorized representative of the mother, pursuant to section 58.007(e), the department may not withhold any of the information we have marked from the requestor under section 58.007(c). *Id.* § 58.007(e). However, if the requestor is not the authorized representative of the mother, the department must withhold the information we have marked under section 58.007(c). We also find the remaining information at issue does not identify any juvenile suspects or offenders for the purposes of section 58.007. As such, section 58.007 is not applicable to the remaining information at issue, and the department may not withhold such information on this basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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. The types of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, including information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We note this office has also found some

kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must generally withhold the marked information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. We note the parent of a child is the child's authorized representative. Section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. If, as noted above, the requestor is the authorized representative of the mother, then the department may not withhold this information from this requestor on the basis of common-law privacy. Otherwise, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

In summary, if the requestor is not the authorized representative of the mother, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code and common-law privacy, and the remaining information must be released to the requestor. If the requestor is the authorized representative of the mother, then the submitted information must be released to the requestor in its entirety.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eb

Ref: ID# 424189

Enc. Submitted documents

c: Requestor
(w/o enclosures)