



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 22, 2013

Ms. Lysia H. Bowling  
City Attorney  
City of San Angelo  
72 West College Avenue  
San Angelo, Texas 76903

OR2013-20442

Dear Ms. Bowling:

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# 506608.

The San Angelo Police Department (the "department") received a request for information pertaining to four specified incidents. 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.

Initially, we note you have not submitted information responsive to two of the requested incidents, report numbers 2013-0011635 and 2013-0011684. To the extent any information responsive to these portions of the request existed on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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, including section 58.007 of the Family Code, which makes confidential juvenile law

enforcement records relating to conduct that occurred on or after September 1, 1997. Fam. Code § 58.007(c). The relevant portion of section 58.007 provides:

(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.

*Id.* § 58.007(c), (e). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and younger than seventeen years of age. *See id.* § 51.02(2). Upon review, we find report number 2013-0011592 involves delinquent conduct by a child that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007). Thus, report number 2013-0011592 is generally confidential under section 58.007 of the Family Code.

However, we note the requestor is a representative of the Concho Valley County Community Supervision and Corrections Department ("CSCD"). Section 58.007(e) gives a "criminal justice agency as . . . defined by Section 411.082, Government Code" a right of access to juvenile law enforcement records. *See id.* § 58.007(e). Section 411.082 defines a "criminal justice agency" as including "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice." Gov't Code § 411.082(3)(A). "Administration of criminal justice" has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 defines "administration of

criminal justice” as the “performance of any of the following activities: detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.” Code Crim. Proc. art. 60.01(1). Thus, we find CSCD is engaged in the administration of criminal justice for purposes of chapter 411 and CSCD is a criminal justice agency as defined by section 411.082. Accordingly, the requestor has a right to inspect report number 2013-0011592 under section 58.007(e) of the Family Code.

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 demonstrated. *See 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 implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, information must be withheld in its entirety to protect the individual’s privacy.

In this instance, the request reveals the requestor knows the identity of the individual involved in report number 2013-0011560. We also note, you copied the requestor on your brief to this office, and that brief reveals the nature of the private information at issue.<sup>1</sup> Therefore, withholding only certain details of the incident from the requestor would not sufficiently preserve the individual’s common-law right of privacy. Accordingly, the department must generally withhold report number 2013-0011560 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

However, as previously noted, the requestor is a representative of CSCD, which is a criminal justice agency. Section 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety] any criminal history record information maintained by the [Department of Public Safety] about a person.” Gov’t Code § 411.089(a). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public

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<sup>1</sup>In the future, the department should redact such information from its brief before sending a copy to the requestor. *See* Gov’t Code §§ 552.301(e-1), .352(a) (person commits offense if person distributes information confidential under the Act).

Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

*Id.* § 411.087(a)(2). We note “criminal history record information” is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). Thus, the submitted information in this instance contains “criminal history record information.” However, a criminal justice agency that receives criminal history record information from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, although the requestor in this instance represents a “criminal justice agency,” she is authorized to obtain criminal history record information from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov’t Code §§ 411.083(c), .087(a)(2).

Therefore, if the department determines the requestor intends to use the criminal history record information for a criminal justice purpose, the department must make available to the requestor the criminal history record information from report number 2013-0011560 that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In this instance, the department must withhold the remaining information in report number 2013-0011560 under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the department determines the requestor does not intend to use the criminal history record information for a criminal justice purpose, then the requestor does not have a right of access to any criminal history record information in report number 2013-0011560 under section 411.087(a)(2) of the Government Code. In this instance, the department must withhold report number 2013-0011560 under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the requestor has a right of access to inspect report number 2013-0011592 under section 58.007(e) of the Family Code. If the department determines the requestor intends to use the criminal history record information from report number 2013-001560 for a criminal justice purpose, the department must make available to the requestor the criminal history

record information from report number 2013-0011560 that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, and withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. If the department determines the requestor does not intend to use the criminal history record information from report number 2013-0011560 for a criminal justice purpose, the department must withhold report number 2013-0011560 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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](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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/akg

Ref: ID# 506608

Enc. Submitted documents

c: Requestor  
(w/o enclosures)