



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2014

Mr. Steven M. Kean
Deputy City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR2014-20296

Dear Mr. Kean:

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# 542400 (LegalDesk #YQO-565018).

The Tyler Police Department (the "department") received a request for "all information that is maintained in the Investigating Officer's file regarding [a specified] incident report[.]" You claim the requested information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions 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, 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.

Fam. Code § 58.007(c). 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. *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 conduct at issue. *See id.* § 51.02(2).

The submitted information may relate to juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. However, we are unable to determine the age of the alleged offender. It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Thus, to the extent the offender was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the submitted information is confidential under section 58.007(c) of the Family Code and the department must withhold the information in its entirety under section 552.101 of the Government Code.¹ However, to the extent the offender was not ten years of age or older and under seventeen years of age at the time of the conduct at issue, the submitted information is not confidential pursuant to section 58.007(c) and may not be withheld under section 552.101 on that basis. In that instance, we will consider your remaining arguments against disclosure of the submitted information.

You also claim section 552.101 of the Government Code in conjunction with the common-law informer’s privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer’s privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer’s identity. *See Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having

¹In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

a duty of inspection or of law enforcement within their particular spheres.” See Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must involve a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. The privilege excepts the informer’s statement only to the extent necessary to protect the informer’s identity. See Open Records Decision No. 549 at 5 (1990).

You have marked information the department seeks to withhold on the basis of the informer’s privilege. You assert the marked information identifies complainants who reported possible violations of chapter 551 of the Texas Transportation Code to the department. You indicate such a violation has criminal penalties. You do not indicate the subject of the information knows the identity of the informants. Upon review, we conclude the department has demonstrated the applicability of the common-law informer’s privilege to some of the information at issue, which we have marked. Therefore, the department may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.² However, the department has failed to demonstrate the remainder of the information you have marked consists of the identifying information of an individual who made a report of a criminal violation to the department for purposes of the informer’s privilege. Accordingly, the department may not withhold the remaining information you have marked under section 552.101 of the Government Code on that basis.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e-mail address we have marked is not one of the types specifically excluded by section 552.137(c). Accordingly, the department must withhold the e-mail address we have marked under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release.

In summary, to the extent the offender was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the submitted information is confidential under section 58.007(c) of the Family Code and the department must withhold the information in its entirety under section 552.101 of the Government Code. However, if the offender was not ten years of age or older and under seventeen years of age at the time of the conduct at issue, we conclude as follows: The department may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The department must withhold the e-mail address we

²As we make this determination, we do not address your remaining claim regarding disclosure of this information.

have marked under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release. The department must 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 542400

Enc. Submitted documents

c: Requestor
(w/o enclosures)