

January 28, 2015

Mr. Guillermo Trevino
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2015-01691

Dear Mr. Trevino:

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# 551534 (W038185).

The Fort Worth Police Department (the "department") received a request for information pertaining to a specified incident. You claim the requested information is excepted from disclosure under sections 552.101 and 552.130 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 conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007(c). *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 report involves allegations of delinquent conduct that occurred after September 1, 1997. However, we are unable to determine the ages of the suspects in the report. It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Accordingly, we must rule conditionally. Thus, to the extent either of the offenders was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the submitted report is confidential under section 58.007(c) and must be withheld in its entirety under section 552.101 of the Government Code. However, if both of the offenders were not ten years of age or older and under seventeen years of age at the time of the conduct at issue, the submitted report is not confidential pursuant to section 58.007(c) and may not be withheld under section 552.101 on that basis.

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. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990).

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, the requestor may have a right of access to this information. *See* Gov’t Code § 552.023(b) (“person or a person’s authorized representative has 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 public disclosure by laws intended to protect that person's privacy interests"). Thus, if the requestor has a right of access to the marked information pursuant to section 552.023(b), then this information may not be withheld from this requestor under section 552.101 in conjunction with common-law privacy. If the requestor does not have a right of access to the information we have marked, then the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

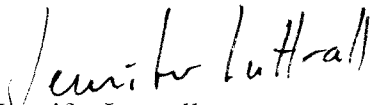
You state the department will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code. Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code § 552.130(c)*. If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). However, section 552.130 protects personal privacy. We note the requestor may have a right of access to the information you have marked for redaction. Accordingly, if the requestor has a right of access to the submitted motor vehicle record information under section 552.023 of the Government Code, then this information may not be withheld from this requestor under section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). If the requestor does not have a right of access to the information at issue, the department must withhold the motor vehicle record information you have marked pursuant to section 552.130 of the Government Code.

In summary, to the extent either of the offenders was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the submitted report is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. If both of the offenders were not ten years of age or older and under seventeen years of age at the time of the conduct at issue, and if the requestor does not have a right of access to the information at issue, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information have marked pursuant to section 552.130 of the Government Code. The remaining information must be released.

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,


Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 551534

Enc. Submitted documents

c: Requestor
(w/o enclosures)