



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2007

Mr. Darrell G-M Noga
Fee, Smith, Sharp, & Vitullo, LLP
13155 Noel Road, Suite 1000
Dallas, Texas 75240

OR2007-06692

Dear Mr. Noga:

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# 279520.

The City of Coppel (the "city"), which you represent, received a request for all documentation and reports regarding the requestor, her daughters, and their specified address during a specified time period. You state that some of the responsive information will be released to the requestor. You claim that a portion of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2007-00694 (2007). Therefore, assuming that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that the city must continue to rely on our decision in Open Records

Letter No. 2007-00694 with respect to the information that was previously ruled upon in that decision.¹

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 made confidential by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The submitted information contains files, reports, records, communications, or working papers used or developed in an investigation under chapter 261; therefore, this information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021). You have not indicated that the city has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the offense reports in Exhibit 2-A and Exhibit 2-B are confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute)*. Accordingly, the city must withhold Exhibit 2-A and Exhibit 2-B in their entirety under section 552.101 of the Government Code as information made confidential by law.²

¹The four criteria for this type of “previous determination” are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general’s prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See Open Records Decision No. 673 (2001)*.

²We note, however, that if the Texas Department of Family and Protective Services has created a file on these cases, the child’s parent(s) may have the statutory right to review that file. *See Fam. Code § 261.201(g)*.

Section 552.101 also encompasses 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. The relevant language of section 58.007(c) reads 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 Subchapter B.

Fam. Code § 58.007(c). Upon review, we find that the submitted offense report in Exhibit 2-F pertains to juvenile delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, Exhibit 2-F is confidential pursuant to section 58.007(c) of the Family Code. The city must withhold Exhibit 2-F from disclosure in its entirety under section 552.101 of the Government Code. The city also seeks to withhold Exhibit 2-D under section 58.007; however, Exhibit 2-D does not pertain to delinquent conduct or conduct indicating a need for supervision. Thus, we conclude that Exhibit 2-D does not constitute juvenile law enforcement records for purposes of section 58.007(c) and it may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses common-law privacy, which protects information if it (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). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. The remaining submitted offense reports contain information that is highly intimate or embarrassing and is not a matter of legitimate public interest. We have marked the information in Exhibit 2-C that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Furthermore, ordinarily only the intimate or embarrassing information would be protected from public disclosure on privacy grounds. In this instance, however, with regard to the offense report in Exhibit 2-D, the requestor knows the identity of the individual

concerned and the nature of the incident to which the information pertains. Under these circumstances, withholding only the intimate or embarrassing details of the incident from the public would not sufficiently protect the individual's right to privacy. Therefore, the city must withhold Exhibit 2-D in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1),(2). Accordingly, the city must withhold the Texas motor vehicle record information we have marked in the remaining submitted information under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act.³ Therefore, the city may withhold the social security number in the remaining submitted information under section 552.147 of the Government Code.

In summary, in conjunction with section 552.101 of the Government Code, the city must withhold (1) Exhibits 2-A and 2-B under section 261.201 of the Family Code; (2) Exhibit 2-F under section 58.007(c) of the Family Code; and (3) the information we have marked in Exhibit 2-C and Exhibit 2-D in its entirety under common-law privacy. The city must also withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The city may withhold the social security number in the remaining submitted information under section 552.147 of the Government Code.⁴ The remaining submitted information must be released.⁵

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

³We note that section 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.

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure.

⁵We note that the requestor has a right of access pursuant to section 552.023 of the Government Code to information in the report that would otherwise be excepted from release under the Act. *See* Gov't Code § 552.023(a) ("a 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."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). But should the city receive another request for this particular information from a different requestor, then the city should again seek a decision from this office.

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Allan D. Meeseey
Assistant Attorney General
Open Records Division

ADM/sdk

Ref: ID# 279520

Enc. Submitted documents

c: Ms. Nancy Leahy
628 Burning Tree Lane
Coppell, Texas 75019
(w/o enclosures)