



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2009

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager, & Smith, LLP
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2009-01098

Dear Mr. Dodd:

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# 333389.

The Allen Police Department (the "department"), which you represent, received a request for information relating to a specified incident, including a specified police report. You claim that the submitted police reports are excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You raise section 552.101 with section 58.007 of the Family Code, which provides that law enforcement records involving juvenile offenders and relating to conduct that occurred on or after September 1, 1997 are confidential. The relevant language of section 58.007(c) reads as follows:

¹Although you also raise sections 552.103 and 552.108 of the Government Code, you have not submitted arguments explaining how these exceptions apply to the submitted information. Therefore, we presume that you have withdrawn these exceptions. See Gov't Code §§ 552.301, 552.302.

(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). Section 58.007(c) is applicable to information that relates to a juvenile as a suspect or offender, and not as a complainant, victim, witness, or other involved party. *See id.* § 58.007(c). The report at issue does not identify any juvenile as a suspect or offender. Therefore, we find the department has failed to demonstrate that the submitted report is a juvenile law enforcement record for purposes of section 58.007. Accordingly, this report may not be withheld under section 552.101 on this basis.

You also raise section 552.101 in conjunction with section 261.201(a) of the Family Code, which provides 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.

Id. § 261.201(a). Although you argue the submitted report is confidential under section 261.201, the report at issue contains no allegations of abuse or neglect of a child. Further, you do not state, nor do the documents reflect, that this report was used in a child abuse or neglect investigation conducted by the department. Finally, you provide no representation from any other investigating agency that this report was used in an investigation of alleged child abuse or neglect conducted under section 261.201. Thus, we find you have failed to demonstrate the applicability of section 261.201 to the submitted police report.

You assert the submitted report contains information subject to common-law privacy, which is also encompassed by section 552.101. Common-law privacy 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). 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. Upon review, we agree that the submitted report contains information that is highly intimate or embarrassing and not of legitimate concern to the public. This information, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the remaining information at issue contains a Texas-issued driver's license number.² Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state." Gov't Code § 552.130(a)(1). Therefore, the department must withhold the Texas-issued driver's license number we marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy, as well as the information we marked under 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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Reg Hargrove", with a long horizontal stroke extending to the right.

Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 333389

Enc. Submitted documents

c: Requestor
(w/o enclosures)