



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2009

Mr. Joseph J. Gorfida, Jr.
City Attorney
City of Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2009-03882

Dear Mr. Gorfida:

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# 338012.

The Richardson Police Department (the "department") received a request for 12 specific police reports. You state you are releasing some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 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. This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

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). A portion of the submitted information consists of files, reports, records, communications, or working papers used or developed in investigations of child abuse, neglectful supervision, and sexual assault of a child; therefore, this information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001 (4) (defining “abuse” and “neglect” for the purposes of chapter 261 of the Family Code). You do not indicate that the department has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude that the information we have marked is confidential pursuant to section 261.201 of the Family Code and the department must withhold it in its entirety under section 552.101 of the Government Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).²

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. For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). The relevant language of section 58.007 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

¹ We note that the requestor, as a parent of the child who is the subject of reported abuse or neglect, may have a right of access to certain records maintained by the Texas Department of Family and Protective Services (“DFPS”). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules: shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if DFPS has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure. Fam. Code § 261.201(g).

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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, 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.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2); *see also id.* §§ 58.007, 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007). This conduct includes reports of juvenile runaways. *See id.* § 51.03(b)(3) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). Upon review, we find that report numbers 05-107866 and 07-020164 do not pertain to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision for purposes of section 58.007(c). Therefore, we find you have failed to demonstrate that report numbers 05-107866 and 07-020164 are juvenile law enforcement records; thus, report numbers 05-107866 and 07-020164 may not be withheld under section 552.101 in conjunction with section 58.007 of the Family Code. However, we find that the reports we have marked are subject to section 58.007(c). Accordingly, the department must withhold report number 05-094935 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

In addition, we note the requestor is the father of the juvenile suspect listed in report numbers 06-067509, 07-036071, 07-073344, 08-091583, 08-108630, and 08-112511. Under section 58.007(e), a parent may inspect law enforcement records concerning his or her own child. *Id.* § 58.007(e). Accordingly, the department may not withhold report numbers 06-067509, 07-036071, 07-073344, 08-091583, 08-108630, and 08-112511 under section 58.007(c). Section 58.007(j)(1) states any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). Accordingly, the department must withhold the identifying information pertaining to juvenile witnesses under section 58.007(j)(1). Section 58.007(j)(2) states that the department may raise any other exceptions to disclosure under the Act or other law. *Id.* § 58.007(j)(2). You state portions of the remaining information are excepted from disclosure under sections 552.130, 552.136, and 552.101 in conjunction with common-law privacy. Accordingly, we will address your arguments under these exceptions regarding the remaining information.

You claim portions of the remaining information are excepted from disclosure under section 552.101 in conjunction with common-law privacy. Section 552.101 encompasses the doctrine of 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. We find that some of the submitted information is highly intimate or embarrassing and not of legitimate public interest. In this instance, however, the requestor is a parent of the child who is the subject of the private information. As such, the requestor has a special right of access to private information concerning his child under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).³ We therefore conclude that the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim that portions of the remaining information are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a Texas driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. Thus, the department must withhold the information we have marked under section 552.130 of the Government Code.

³ Section 552.023 of the Government Code provides that a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(b).

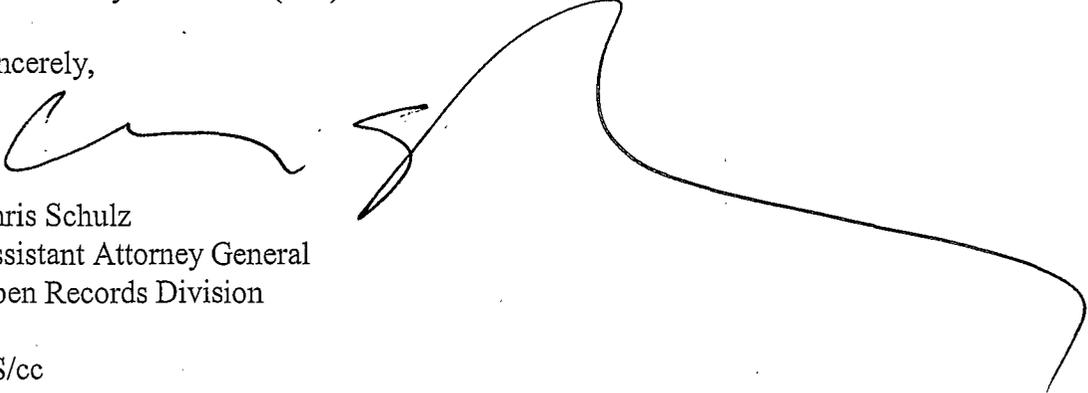
Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136. Accordingly, the department must withhold the information you have marked, as well as the information we have marked, under section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold report number 05-094935 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Any personally identifiable information concerning juvenile witnesses in report numbers 06-067509, 07-036071, 07-073344, 08-091583, 08-108630, and 08-112511 must be redacted under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The department must withhold the information we have marked under section 552.130 of the Government Code, and the marked information under section 552.136 of the Government Code. The remaining information must be released.⁴

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.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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

⁴ Because the records to be released contain information that is confidential with respect to the general public, in the event the department receives another request for this information from someone other than this requestor or his authorized representative, the department must ask this office for a decision whether the information is subject to public disclosure. *See* Gov’t Code § 552.023; *see also* ORD 481 at 4.

Ref: ID# 338012

Enc. Submitted documents

cc: Requestor
(w/o enclosures)