



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2009

Chief Gregory L. Grigg
City of Deer Park Police Department
2911 Center Street
Deer Park, Texas 77536

OR2009-17160

Dear Mr. Grigg:

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# 363065 (City of Deer Park ORR #32).

The Deer Park Police Department (the "department") received a request for information pertaining to a named individual at a specified location. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(a), (b). In this instance, you state the department received the request for information on September 3, 2009. However, you did not request a ruling from this office until September 25, 2009, more than ten business days after receiving the request for information. Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to

withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

Section 552.101 of the Government Code excepts from public 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 552.101 of the Government Code encompasses section 261.201(a) of the Family Code, which 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). You state that report number 2009-6920 was used in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Based on your representations and our review, we conclude this report falls within the scope of section 261.201. You indicate the department does not have a rule governing the release of this type of information. Accordingly, report number 2009-6920 is confidential pursuant to section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

Section 552.101 also encompasses section 58.007 of the Family Code, which provides in part:

(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.

...

(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.

Fam. Code § 58.007(c), (e), (j). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. 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 id.* § 51.02(2). We have reviewed the remaining submitted information and find that report

number 2009-8062 and report number 2009-11503 both involve allegations of juvenile delinquent conduct that occurred after September 1, 1997. Thus, these two reports are subject to section 58.007(c). With respect to report number 2009-8062, it does not appear any exceptions to confidentiality in section 58.007 apply to this information. Therefore, report number 2009-8062 must be withheld under section 552.101 of the Government Code in conjunction with section 58.007.

However, we note the requestor may be the legal guardian of the alleged juvenile offender listed in report number 2009-11503. Thus, if the requestor is not a legal guardian of the juvenile offender listed in report number 2009-11503, that report must be withheld in its entirety under section 552.101 in conjunction with section 58.007 of the Family Code. To the extent the requestor is a legal guardian of the juvenile offender in report number 2009-11503, then pursuant to section 58.007(e), it may not be withheld from this requestor under section 58.007(c). *Id.* § 58.007(e). However, the personally identifiable information concerning juvenile victims or witnesses must be redacted. *Id.* § 58.007(j)(1). Additionally, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Therefore, because you assert that report number 2009-11503 is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with common-law privacy, we must address whether the information at issue is excepted under that section.

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 the doctrine of common-law privacy, which 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 types 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. You generally assert that report number 2009-11503 may be protected from public disclosure under section 552.101 in conjunction with common-law privacy. Upon review, we find you have failed to demonstrate that any part of report number 2009-11503 is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department may not withhold any portion of the report under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold report number 2009-6920 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold report number 2009-8062 pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. If the requestor is the legal guardian of the juvenile offender listed in report number 2009-11503, that report

must be released to the requestor with the names of any juvenile victims and witnesses redacted. If the requestor is not a legal guardian, report number 2009-11503 must be withheld in its entirety pursuant to section 552.101 in conjunction with section 58.007 of the Family Code.

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, toll free, at (888) 672-6787.

Sincerely,



James McGuire
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 363065

Enc. Submitted documents

c: Requestor
(w/o enclosures)