



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2009

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2009-17260

Dear Mr. Weir:

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# 363907 (COSA File Nos. 2009-4380, 2009-4381, 2009-4382, 2009-4384, 2009-4388, 2009-4390, 2009-4389, 2009-4391).

The City of San Antonio (the "city") received eight requests from the same requestor for eight specified police reports. You claim 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.

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, such as section 58.007(c) of the Family Code. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See* Fam. Code § 58.007(c). 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 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.

Id. § 58.007(c), (e). 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 note, however, section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party; it is only applicable to juveniles listed as suspects, offenders, or defendants. *See id.* § 58.007(c). You assert the submitted reports involve juveniles engaged in conduct in need of supervision. *See id.* § 51.03(b) (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"). You further state the city has determined the requestor is no longer the legal guardian of the individuals listed in the submitted reports. Upon review, we agree some of the submitted reports, which we have marked, are subject to section 58.007. It appears none of the exceptions in section 58.007 apply; therefore, these reports are confidential under section 58.007(c) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code. We note, however, the listed suspects in three of the remaining reports were seventeen years of age at the time of the listed offenses. Further, one of the remaining reports does not pertain to a juvenile as a suspect, arrestee, or offender. Thus, we find you have failed to demonstrate how the remaining reports involve juvenile delinquent conduct or conduct indicating a need for supervision as defined by the Family Code. *See id.* § 51.03(a), (b). Therefore, none of the remaining reports may be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We note a portion of the remaining information is subject to common-law privacy. Section 552.101 also encompasses the common-law right of 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 types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental

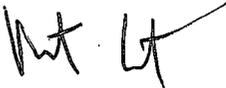
or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked information that is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the reports we marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must also withhold the information we marked under section 552.101 in conjunction with common-law privacy. As no further exception to disclosure has been raised, 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.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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 363907

Enc. Submitted documents

c: Requestor
(w/o enclosures)