



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 23, 2010

Ms. Michelle Rangel  
Assistant County Attorney  
Fort Bend County  
301 Jackson Street, Suite 728  
Richmond, Texas 77469

OR2010-04024

Dear Ms. Rangel:

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# 373330.

The Fort Bend County Fire Marshal (the "marshal") received a request for photographs, reports, run records, or other information regarding an apartment fire that occurred on a specified date at a specified location. 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. Section 552.101 encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides in pertinent 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 Subchapter B, D, and E.

Fam. Code § 58.007(c). Section 58.007 makes confidential law enforcement records relating to a child's delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. Although you assert report number FM09-12-0002 is confidential under section 58.007, in this instance, section 58.007 is inapplicable because the report is not a law enforcement record of a "child" as defined by section 51.02 of the Family Code. A "child" is a person who is:

(A) ten years of age or older and under 17 years of age; or

(B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

Fam. Code § 51.02(1). Report number FM09-12-0002 involves delinquent conduct by an eight-year-old boy. Because the Legislature has chosen to protect only the law enforcement records of a child who is between the ages of ten and sixteen at the time of the reported conduct, we must conclude the marshal may not withhold report number FM09-12-0002 under section 58.007(c) of the Family Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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). Report number FM09-12-0002 is an investigation of a fire at an apartment building. The report does not reflect, nor have you explained, how it was used or developed in an investigation of child abuse. Therefore, we find you have failed to demonstrate the applicability of section 261.201 to report number FM09-12-0002. Consequently, this report may not be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. 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. This office has found the identities of victims of sexual abuse are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). The report contains the identifying information of victims of sexual abuse. This identifying information, which we have marked, must be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). Therefore, the marshal must withhold the Texas driver's license numbers we marked in report number FM09-12-0002 under section 552.130.<sup>1</sup>

In summary, the marshal must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The marshal must withhold the Texas driver's license numbers we marked under section 552.130 of the Government Code. The remaining information must be released.<sup>2</sup>

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<sup>1</sup>We note you have redacted certain Texas driver's license numbers under section 552.130 of the Government Code pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009). See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

<sup>2</sup>We note you have redacted a social security number under section 552.147 of the Government Code. 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. Gov't Code § 552.147.

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](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,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

Ref: ID# 373330

Enc. Submitted documents

c: Requestor  
(w/o enclosures)