



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2010

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2010-04303

Dear Mr. Bounds:

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# 372813.

The City of Corpus Christi (the "city") received a request for a specified complaint and its attachments filed against the requestor. You claim the submitted complaint 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 33.032 of the Government Code, which states "[e]xcept as otherwise provided by this section and [s]ection 33.034, the papers filed with and proceedings before the [State Commission on Judicial Conduct (the "commission")] are confidential prior to the filing of formal charges." *Id.* § 33.032(a). You seek to withhold the submitted complaint and attachments under section 33.032, and state the city filed the submitted information with the commission. Chapter 33 governs the actions of and proceedings before the commission. *See, e.g., id.* §§ 33.002 (establishing commission), .021 (stating powers of commission). After further review of chapter 33, we now conclude section 33.032 authorizes only the commission to withhold information it maintains for investigative proceedings and other actions, and does not make records maintained by the city confidential, regardless of whether or not the city has filed or intends to file those records with the commission. *Cf.* Open

Records Decision No. 533 at 3 (1989) (determining predecessor to section 402.083(a) of the Labor Code applies to only predecessor to Division of Workers' Compensation ("division") and information obtained from division, and not to entities that possess same or similar information in their own right); *see* Open Records Decision Nos. 649 at 3 (1996) (noting express language of confidentiality statute controls scope of statute's protection), 478 at 2 (1987) (same). Accordingly, we find you have failed to demonstrate the submitted records maintained by the city are confidential under section 33.032.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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.

Fam. Code § 58.007(c). 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). A portion of the submitted information appears to be records pertaining to juvenile delinquent conduct obtained from prosecutors' files. *See id.* § 51.03(a) (defining juvenile "delinquent conduct" for the purposes of section 58.007). This information, which we have marked, consists of court orders and prosecution notes. It does not appear any of the exceptions in section 58.007 of the Family Code apply. Therefore, to the extent the offenders listed in the marked information were "children" for purposes of section 58.007 at the time of the offenses, we find the information is confidential pursuant to section 58.007(c) of the Family Code, and must be withheld under section 552.101 of the Government Code.

Section 552.101 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 establish the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found common-law privacy applies to the identifying information of juvenile offenders. *See* Open Records Decision No. 384 (1983); *cf.* Fam. Code § 58.007. The remaining information contains prosecutor's office records that were created for administrative purposes. These administrative records consist of office sign-in sheets that appear to include juvenile offenders' identifying information. To the extent the marked sign-in sheets contain juvenile offenders' identifying information, that information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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). In the remaining information, we have marked medical and mental health information that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

The remaining information includes city employees' personal information that may be protected under section 552.117 of the Government Code.¹ Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Additionally, section 552.117 encompasses personal cellular telephone numbers, provided the cellular telephone service is paid for by the employee with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117 exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The city may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.

We have marked city employees' home addresses and telephone numbers, cellular telephone numbers, and family information in the remaining information. You have not informed us whether or not the employees timely chose to not allow public access to their personal information. Furthermore, you have not informed us whether or not they paid for their

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

cellular telephone service. Therefore, to the extent the employees timely requested confidentiality for their personal information and the cellular telephone numbers we have marked are the employees' personal cellular telephone numbers, the city must withhold the marked information pursuant to section 552.117(a)(1) of the Government Code. To the extent the employees did not timely request confidentiality or the marked cellular telephone numbers are not personal cellular telephone numbers, the marked information may not be withheld under section 552.117(a)(1) of the Government Code.

The remaining information includes an e-mail address subject to section 552.137 of the Government Code, which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address in the remaining information is not specifically excluded by section 552.137(c). As such, this e-mail address, which we have marked, must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release.² *See id.* § 552.137(b).

In summary, to the extent the offenders listed in the marked court orders and prosecution notes were children for purposes of section 58.007 at the time of the offenses, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. To the extent the marked sign-in sheets contain juvenile offenders' identifying information, that information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the employees whose information we have marked timely requested confidentiality for their personal information and the marked cellular telephone numbers are the employees' personal cellular telephone numbers, the city must withhold the marked information pursuant to section 552.117(a)(1) of the Government Code. The city must withhold the marked e-mail address under section 552.137 of the Government Code. The remaining information must be released.

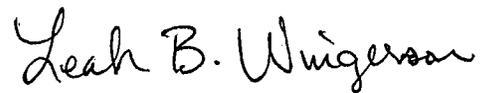
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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 responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php.

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 372813

Enc. Submitted documents

c: Requestor
(w/o enclosures)