



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 26, 2010

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

OR2010-07664

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# 380890 (COSA Nos. 2010-5364 and 2010-5631).

The San Antonio Police Department (the "department") received a request for records pertaining to a specified address or any of three named individuals and a second request from a different requestor for a specified offense report. 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 public 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. Section 261.201(a) of the Family Code provides as follows:

(a) [T]he 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 assert incident report number 80565547 consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.011). Based on your representations, we agree this information is within the scope of section 261.201. You do not indicate the department has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we find incident report number 80565547 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.<sup>1</sup> We note, however, the remaining submitted report consists neither of a report of alleged or suspected abuse or neglect nor of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. Accordingly, none of the remaining information may be withheld under section 552.101 on that basis.

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(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. Fam. Code § 51.02(2). Section 58.007 provides in relevant 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

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument as it pertains to 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 Subchapters B, D, and E.

*Id.* § 58.007(c). You assert incident report number 8-0095446 is protected by section 58.007. We note, however, section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Here, the report at issue concerns a missing juvenile who is not listed as a suspect or offender. Therefore, section 58.007 does not apply to report number 8-0095446, and this report may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 also 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. 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. Upon review, we find no portion of the remaining information to be highly intimate or embarrassing and not of legitimate public interest. Therefore, we conclude no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold incident report number 80565547 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As you raise no further exception to the disclosure of the remaining information, it must be released.<sup>2</sup>

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

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<sup>2</sup>We note the information being released contains social security numbers. 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.

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,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/rl

Ref: ID# 380890

Enc. Submitted documents

c: Requestors (2)  
(w/o enclosures)