



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2010

Ms. Martha T. Williams
Olson & Olson, L.L.P.
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019

OR2010-08206

Dear Ms. Williams:

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# 381712.

The City of Friendswood (the "city"), which you represent, received a request for UCR data from 2008 to the date of the request.¹ 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.

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 made confidential by other statutes, such as section 261.201 of the Family Code, which provides in relevant part as follows:

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

(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). You claim the information you have marked under section 261.201 constitutes records used or developed in an investigation of alleged child abuse. However, the submitted information does not identify any alleged victims or reveal on its face whether any of them was a child for the purposes of section 261.201. *See id.* § 101.003(a) (defining “child” for purposes of section 261.201 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”). We find that you have not demonstrated how the information you have marked consist of files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under section 261.201 of the Family Code. Thus, this information you have marked may not be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses section 58.007 of the Family Code. 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.

Id. § 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). 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 or offenders. *See id.* §§ 58.007, 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). Although you seek to withhold information you have marked under section 58.007, we find that this information does not identify a juvenile suspect or offender. Accordingly, we find that the city has not demonstrated the applicability of section 58.007(c) of the Family Code to the marked information, and the city may not withhold it under section 552.101 of the Government Code on that basis.

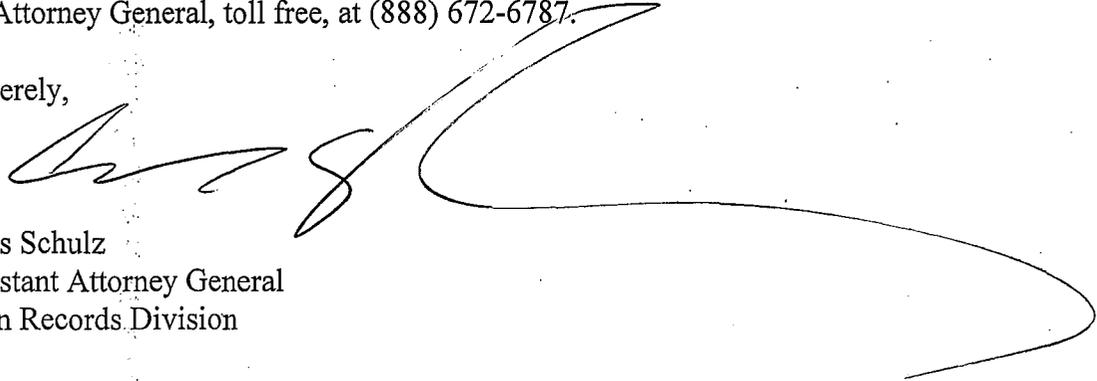
Section 552.101 also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. 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. *See id.* at 683. You argue that the location of a sexual assault crime should be withheld under common-law privacy. However, you do not explain, nor do the documents reveal on their face, how this information would identify any victims of sexual assault. Nevertheless, we conclude that to the extent this information reveals the sexual assault victim’s home address, the city must withhold this information under section 552.101 in conjunction with common-law privacy. Information that does not reveal a sexual assault victim’s home address may not be withheld under section 552.101 in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the remaining information must be released to the requestor.

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,

A large, stylized handwritten signature in black ink, appearing to read 'Chris Schulz', with a long horizontal flourish extending to the right.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/eeg

Ref: ID# 381712

Enc. Submitted documents

cc: Requestor
(w/o enclosures)