



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2010

Mr. Floyd M. Akers
City Attorney
City of Pflugerville
P.O. Box 679
Pflugerville, Texas 78691-0679

OR2010-15516

Dear Mr. Akers:

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#396655.

The Pflugerville Police Department (the "department") received a request for incident report numbers 06100217 and 08070559. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts 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 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). We find that the information in incident report number 08070559 pertains to an investigation of child endangerment. *See id.* § 261.001(1)(A) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. We therefore conclude that the requested information is confidential under section 261.201(a). Therefore, incident report number 08070559 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

Section 552.101 also encompasses section 58.007 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 id.* § 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.

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. *See id.* § 51.02(2). You assert report number 06100217 involves a juvenile engaged in delinquent conduct or conduct indicating a need of supervision. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). Although report number 06100217 lists the juvenile as a suspect, it does not identify this juvenile as having

¹As our ruling is dispositive, we do not address your remaining arguments against disclosure of incident report number 08070559.

engaged in delinquent conduct or conduct indicating a need for supervision as defined by the Family Code. Thus, we find you have failed to demonstrate how report number 06100217 is subject to section 58.007 of the Family Code, and it may not be withheld under section 552.101 of the Government Code on that basis. However, we will address your claims under section 552.101 in conjunction with common-law privacy for report number 06100217.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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 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 that portions of incident report number 06100217, which we have marked, are highly intimate and embarrassing and not of legitimate public interest. However, the requestor appears to be the authorized representative of the person to whom the private information pertains. Section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. Therefore, if the requestor is not the authorized representative of the subject individual, then the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. On the other hand, if the requestor is the authorized representative of the subject individual, then the department may not withhold any portion of report number 06100217 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 or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state."² Gov't Code § 552.130(a). Thus, the department must withhold the Texas motor vehicle record information we have marked in incident report number 0610217 pursuant to section 552.130 of the Government Code.³

²The 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).

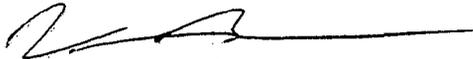
³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

In summary, the department must withhold incident report number 08070559 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is not the authorized representative of the individual whose information is at issue, then department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code. The remaining information must be released.⁴

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 396655

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We 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. Gov't Code § 552.147(b). We note, however, that if the requestor is the authorized representative of the individual whose social security number is being released, the department may not withhold this individual's social security number from the requestor. See Gov't Code § 552.023.