



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 9, 2011

Mr. Art Pertile, III  
Olson & Olson, L.L.P.  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019

OR2011-08226

Dear Mr. Pertile:

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# 420014 (Stafford # COS11-011 and COS11-012).

The City of Stafford (the "city") received two requests for a specified police report. 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.

You contend the submitted information is subject to section 58.007 of the Family Code. 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 58.007, which provides in pertinent part 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.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), child means a person who is ten years of age or older and under seventeen years of age. *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 and not as a suspect or offender. Upon our review, we find the submitted report does not identify any juvenile suspects or offenders for the purposes of section 58.007. As such, section 58.007 is not applicable and the city may not withhold the submitted report on this basis.

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

(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.

(k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating

agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)-(l). Because the submitted information pertains to an investigation of alleged or suspected child abuse or neglect, we agree the information is within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of this section 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). In this instance, the submitted information indicates that the first requestor is the father and the second requestor is the mother of the child victim listed in the information at issue. However, the report indicates the father is the individual alleged to have committed the alleged or suspected abuse or neglect; thus, the first requestor does not have a right of access under section 261.201(k). *See id.* § 261.201(k). Accordingly, the city must withhold the submitted information from the first requestor in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

However, we note the mother is not an individual alleged to have committed the alleged or suspected abuse or neglect. *See id.* § 261.201(k). Thus, the city may not use section 261.201(a) to withhold the information at issue from the second requestor. *Id.* Section 261.201(1)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Thus, the city must withhold the reporting party’s identity, which we have marked in information you submit as responsive to the second request, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the

Family Code. In addition, section 261.201(1)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure; thus, we will address your remaining argument under common-law privacy. *Id.* § 261.201(1)(2).

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 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. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decision Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). As noted above, the second requestor is the mother of the individual whose private information is at issue. As such, pursuant to section 552.023(b) the second requestor has a special right of access to information that would which would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). Therefore, the submitted report may not be withheld from the second requestor on the basis of common-law privacy.

In summary, the city must withhold the submitted report in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the reporting party's identifying information we have marked in the information you submit as responsive to the second request, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The city must release the remaining information to the second 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](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 handwritten signature in cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/em

Ref: ID# 420014

Enc. Submitted documents

c: Requestors  
(w/o enclosures)