



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2011

Chief Gregory L. Grigg
Deer Park Police Department
2911 Center Street
Deer Park, Texas 77536

OR2011-10621

Dear Chief Grigg:

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# 425177.

The Deer Park Police Department (the "department") received a request for all information pertaining to the requestor's daughter. You state some of the requested information will be released to the requestor. You claim the remaining requested 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 made confidential by other statutes. Section 58.007 of the Family Code provides for the confidentiality of juvenile law enforcement records related to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Fam. Code § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). Section 58.007 reads, in relevant 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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). 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). Upon review, we agree that the submitted reports involve a juvenile engaged in conduct indicating a need for supervision occurring after September 1, 1997; therefore, the submitted information is subject to section 58.007. However, the requestor is the parent of the juvenile offender listed in the submitted information. Under section 58.007(e), the requestor has a right to inspect or copy law enforcement records pertaining to her child. *See id.* § 58.007(e). Section 58.007(j) provides, however, that any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). We note that, for purposes of section 58.007(j), we conclude a juvenile witness is a person who is under eighteen years of age. Accordingly, the department must redact the personally identifiable information concerning a juvenile witness, which we have

marked, from the submitted information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. In addition, section 58.007(j)(2) states that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). You assert the remaining information is also excepted under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and common-law privacy. Accordingly, we will address the applicability of these exceptions to the remaining submitted information.

Section 552.101 also encompasses section 261.201(a) 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.

Id. § 261.201(a). You state the information you have marked in report number 11-00672 is confidential under section 261.201(a) because it relates to a report of alleged child abuse made to the Texas Department of Family and Protective Services' Child Protective Services Division ("CPS"). *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261); *see also 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). Upon review, we agree the information we have marked is a report of alleged child abuse or neglect. We find the marked information is within the scope of section 261.201(a) of the Family Code. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

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 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. *Id.* at 683. Upon review,

however, we find the remaining information is not highly intimate or embarrassing; therefore, the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

In summary, the department must redact the personally identifiable information concerning a juvenile witness, which we have marked, from the submitted information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The remaining information must be released.¹

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 425177

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because the requestor has a right of access to some of the submitted information that would be confidential with respect to the general public, the department should request another decision if it receives a request for this same information from a different requestor. See Gov't Code §§ 552.301(a), .302.