



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 27, 2011

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2011-18969

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# 441962 (COSA File No. W003857).

The San Antonio Police Department (the "department") received a request for a specified report and a photograph. 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.<sup>1</sup>

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 exception encompasses information other statutes make confidential, such as section 58.007 of the Family Code. Section 58.007 provides in 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:

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<sup>1</sup>We understand you have submitted a representative sample of the responsive information. We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(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:

...

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

Fam. Code § 58.007(c), (e), (j)(2). Upon review, we find the submitted report pertains to a juvenile engaged in delinquent conduct occurring after September 1, 1997. Thus, the submitted report is subject to section 58.007. *See id.* § 51.03 (defining "delinquent conduct"). However, the requestor is the parent of the juvenile offender listed in the submitted report subject to section 58.007(c); therefore, the submitted report may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 58.007. *See id.* § 58.007(e). We note, however, because you assert the submitted report is protected by the doctrine of common-law privacy, we must address whether the information at issue is excepted under section 552.101 on that basis. *See id.* § 58.007(j)(2).

Section 552.101 of the Government Code 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also determined common-law privacy protects the identifying information of juvenile offenders. See Open Records Decision No. 394 (1983); cf. Fam. Code § 58.007. However, as a parent of the minor with the privacy interest, the requestor has a special right of access to information that would ordinarily be withheld to protect her child's common-law privacy interests, and such information cannot be withheld from her on that basis. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Accordingly, the department may not withhold any of the submitted report under section 552.101 on the basis of common-law privacy. As you raise no other exceptions against disclosure of the submitted information, it must be released to the requestor.<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 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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/agn

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<sup>2</sup>The information being released contains confidential information to which the requestor has a right of access. Thus, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

Ref: ID# 441962

Enc. Submitted documents

c: Requestor  
(w/o enclosures)