



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2011

Mr. Tyler F. Wallach
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-19173

Dear Mr. Wallach:

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# 440766 (Request No. W012308).

The City of Fort Worth (the "city") received a request for several specified reports. You state the city has released one of the requested reports to the requestor. 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.

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 section 261.201 of the Family Code, which provides in pertinent part 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). Upon review, we find Incident Report Nos. 06135115 and 0618320 consist of information used or developed in an investigation under chapter 261. *See id.* § 261.001(1) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Accordingly, we find these reports are subject to section 261.201(a). You have not indicated the city has adopted a rule that governs the release of the information. Therefore, we assume no such regulation exists. Given that assumption, the reports at issue are confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* Accordingly, the city must withhold these reports from disclosure under section 552.101 of the Government Code as information made confidential by law.

Section 552.101 also encompasses Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) 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.

Fam. Code § 58.007(c). Incident Report Nos. 04086072, 04077865, 04065968, and 05080349 involve juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, these reports are confidential pursuant to section 58.007(c) of the Family Code. Thus, the city withhold these reports from disclosure under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common law. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. 540 S.W.2d at 683. This office has found the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). In addition, information which either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld from public disclosure under common-law privacy. Open Records Decision Nos. 393 at 2 (1983), 339 (1982).

You assert portions of the remaining information, which you have marked, are private. We agree the information you marked is private. We have also marked additional private information. The city must withhold the marked private information based on section 552.101 in conjunction with the common-law right to privacy.

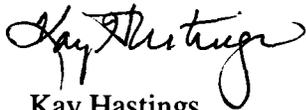
In summary, the city must withhold Incident Report Nos. 06135115 and 0618320 based on section 552.101 in conjunction with section 261.201(a) of the Family Code. The city must withhold Incident Report Nos. 04086072, 04077865, 04065968, and 05080349 based on section 552.101 in conjunction with section 58.007(c) of the Family Code. The city must withhold the information it marked and the additional information we marked in Incident Report Nos. 05104344 and 0734092 based on section 552.101 in conjunction with the common-law privacy right to privacy. 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 handwritten signature in black ink, appearing to read "Kay Hastings". The signature is fluid and cursive, with the first name "Kay" being more prominent.

Kay Hastings
Assistant Attorney General
Open Records Division

KH/sdk

Ref: ID# 440766

Enc. Submitted documents

c: Requestor
(w/o enclosures)