



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2012

Ms. Denise Jordan
Open Records
William County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2012-00519

Dear Ms. Jordan:

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# 442859.

The Williamson County Sheriff's Office (the "sheriff") received a request for information concerning the requestor during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

We first note the requestor has consented to the redaction of social security numbers. Thus, the social security numbers in the submitted information are non-responsive. This ruling does not address the public availability of non-responsive information, and the sheriff is not required to release non-responsive information in response to this request.

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 of the Family Code, 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.

...

(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 [the Act], or other law.

Fam. Code § 58.007(c), (e), (j). 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"). For purposes of section 58.007(c), a child is a person who was ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). The submitted report involves the requestor, who was fifteen years old at the time of the incident. Thus, we agree this report consists of law enforcement records that involve juvenile delinquent conduct that occurred after September 1, 1997. Accordingly, the submitted report is subject to section 58.007(c).

However, as noted, the requestor is the juvenile suspect listed in the report at issue. Section 58.007(e) allows the requestor access to his own juvenile law enforcement records. *Id.* § 58.007(e). Section 58.007(j)(1), however, provides that any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor must be redacted; thus, the department must withhold the information we have marked on this basis.¹ *See id.* § 58.007(j)(1). However, we find the remaining information you have marked does not constitute identifying information of a juvenile suspect, offender, victim, or witness other than the requestor and may not be withheld on that basis. Nevertheless, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, we will consider your remaining argument against disclosure.

Section 552.101 of the Government Code also encompasses the common-law right to privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Therefore, the sheriff must withhold the marked information under section 552.101 in conjunction with common-law privacy. However, we find there is legitimate public interest in the remaining information you have marked because it pertains to the details of the crime at issue. *See* Open Records Decision No. 400 at 4 (1983); *see generally* *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Therefore, the sheriff may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

In summary, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code and common-law privacy. The remaining information must be released to the requestor.

¹Because our ruling as to this information is dispositive, we do not address your remaining argument against disclosure of a portion of this information.

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 cursive script that reads "Misty Haberer Barham".

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 442859

Enc. Submitted documents

c: Requestor
(w/o enclosures)