



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 29, 2012

Ms. Donna L. Johnson  
Olson & Olson, L.L.P.  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019

OR2012-03089

Dear Ms. Johnson:

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# 446708 (Ref: HUM-THO).

The City of Humble (the "city"), which you represent, received a request for "all complaints filed by" a named individual during a specified time period. We understand you to indicate the city will redact driver's license numbers pursuant to section 552.130 of the Government Code. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have submitted three reports which are not responsive to the instant request, as they do not involve the named individual as a complainant. The city need not release non-responsive information in response to this request and this ruling will not address that information.

Section 552.101 of the Government Code excepts from public 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. Section 261.201 of the Family Code provides in part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Although you contend the information at issue is confidential under section 261.201, we find these records do not consist of either a report of alleged or suspected child abuse or neglect made under chapter 261 of the Family Code or information used or developed in an investigation under chapter 261. We therefore conclude the city may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You also contend the information at issue is confidential under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c), which provides as follows:

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.

*Id.* § 58.007(c). For purposes of section 58.007(c), a “child” is defined as a person ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party; it is only applicable to juveniles listed as suspects or offenders. *See id.* §§ 58.007, 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). We have reviewed the information at issue and find it does not identify a juvenile suspect or offender for purposes of section 58.007.

Accordingly, we find that you have not demonstrated the applicability of section 58.007(c) of the Family Code to these records. Thus, the city may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 also encompasses 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. *Id.* at 683.

We understand you to assert the information at issue is confidential in its entirety pursuant to common-law privacy. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this case, you have not demonstrated this is a situation in which the information at issue must be withheld in its entirety on the basis of common-law privacy. Therefore, the city may not withhold these records under section 552.101 of the Government Code on that basis.

Next, we address your claim under section 552.108 of the Government Code, which excepts from disclosure information concerning an investigation that concluded in a result other than a conviction or deferred adjudication. Gov't Code §§ 552.108(a)(2), (b)(2). A governmental body claiming sections 552.108(a)(2) and 552.108(b)(2) must demonstrate that the requested information relates to a criminal matter that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2–3 (1986).

Although you claim the information at issue is excepted from disclosure under sections 552.108(a)(2) and 552.108(b)(2), you do not inform us that this case has concluded. Sections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue is related to a *concluded* criminal case “that did not result in conviction or deferred adjudication.” *Id.* § 552.108(a)(2), (b)(2). Upon review, we find you have failed to demonstrate the information at issue relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Thus, we find you have not demonstrated the applicability of section 552.108(a)(2) or section 552.108(b)(2) to the information at issue. *See id.* § 552.301(e)(1)(A). Therefore, we conclude the city may not withhold the information at issue under section 552.108 of the Government Code. Accordingly, the information at issue 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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 446708

Enc. Submitted documents

c: Requestor  
(w/o enclosures)