



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2012

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2012-06716

Dear Ms. Camp-Lee:

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# 452786.

The City of Round Rock (the "city"), which you represent, received a request for any and all police reports for a specified time period pertaining to homicides of female victims and aggravated assaults and aggravated sexual assaults of female victims in which wounds were inflicted using a club or similar weapon and the victims suffered blunt force trauma. You claim some of the 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 representative sample of information.¹

Initially, we note the city seeks to withdraw its present request for an open records decision because the requestor's public information request was withdrawn by operation of law for failure to timely respond to a cost estimate for providing requested records. Upon review of a copy of the cost estimate, we find it does not comply with the requirements of section 552.2615 of the Government Code because it does not inform the requestor that

¹We assume the "representative sample" of information 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 those submitted to this office.

inspection is an available less costly method of obtaining the requested information. *See* Gov't Code § 552.2615(a). Accordingly, we conclude the requestor's public information request has not been withdrawn by operation of law, and the city may not withdraw its request for a ruling on that basis. We will, therefore, address your argument against disclosure of the requested 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." *Id.* § 552.101. This section encompasses information made confidential by other statutes, such as section 261.201 of the Family Code, which provides in relevant 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 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). We note some of the information at issue relates to investigations of alleged child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011); Penal Code § 22.011(c)(1) (defining "child" for purposes of Penal Code section 22.011 as person under 17 years of age). Accordingly, we find this information, which we have marked, is subject to chapter 261 of the Family Code. You do not indicate the city's police department, which conducted the investigation, has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the information we have marked is confidential pursuant to section 261.201 of the Family Code, and the city must withhold it under section 552.101 of the Government Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

September 1, 1997 are confidential under section 58.007. Section 58.007 provides in relevant 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:

(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). 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 at the time of the reported conduct. *See id.* § 51.02(2). Section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. *See id.* § 58.007(c). Upon review, we find the remaining submitted information does not involve a juvenile identified as a suspect, offender, or defendant. Thus, you have failed to demonstrate how the remaining information at issue is subject to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. *See id.* at 683. Whether information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See Open Records Decision No. 373* (1983). You argue the remaining submitted information should be withheld in its entirety under section 552.101 in conjunction with common-law privacy. The remaining submitted information pertains to alleged sexual assaults. Generally, only

information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold all of the information at issue when the requestor knows the identity of the alleged sexual assault victim. *See* ORD 393. Although you seek to withhold the remaining submitted information in its entirety, you have not demonstrated, nor does the information reflect, the requestor knows the identities of the alleged sexual assault victims. Thus, the city may not withhold the remaining submitted information in its entirety under common-law privacy. Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, we determine the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the city may not withhold any of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country.³ *See* Govt Code § 552.130(a)(1). Upon review, we find the city must withhold the driver's license numbers we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) section 261.201 of the Family Code and (2) common-law privacy. The city must withhold the driver's license numbers we have marked under section 552.130 of the Government Code. The city must release the remaining information at issue.⁴

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.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴We note the remaining information at issue contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/akg

Ref: ID# 452786

Enc. Submitted documents

c: Requestor
(w/o enclosures)