



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2012

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2012-07104

Dear Mr. Griffith:

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# 453512.

The Town of Little Elm (the "town"), which you represent, received a request for information pertaining to a named individual. You claim that 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. This section encompasses information protected 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 [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 [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). You contend case number 0700060246 is subject to section 261.201 of the Family Code. However, upon review, we find you have failed to demonstrate how this report was used or developed in an investigation of child abuse or neglect conducted under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Thus, the town may not withhold case number 0700060246 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 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.

...

(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 Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a) (defining "delinquent conduct"). 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. *See id.* § 51.02(2). Upon review, we find case numbers 0600090745 and 0700060246 each involve a juvenile engaged in delinquent conduct occurring after September 1, 1997. *See id.* § 51.03(a) (defining "juvenile delinquent conduct" for the purposes of section 58.007). Thus we agree the two cases are subject to section 58.007(c). It does not appear that any of the exceptions to confidentiality under section 58.007 apply to case number 0600090745. Accordingly, the town must withhold case number 0600090745 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

We note, however, the requestor is a recruiter for the United States Armed Forces, and the juvenile suspect listed in case number 0700060246 is a potential enlistee. Under section 58.007(e), the juvenile may inspect law enforcement records concerning himself. *Id.* § 58.007(e). In this case, the requestor has provided signed, written consent from the individual at issue. Therefore, pursuant to section 58.007(e), the requestor, with the individual's consent, has a right to inspect juvenile law enforcement records concerning this individual. However, section 58.007(j)(2) of the Family Code 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). Accordingly, we will address your remaining argument against disclosure of case number 0700060246.

Section 552.101 of the Government Code also encompasses the common-law right of 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 established. *Id.* at 681-82. 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. 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). This office has found the following types of information are excepted from required public disclosure under 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); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

You contend some of the information in case number 0700060246 is subject to common-law privacy. Upon review, we find you have failed to establish any of the information in case number 0700060246 is highly intimate or embarrassing and not of legitimate concern to the public. Consequently, the town may not withhold any of the information in case number 0700060246 under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the town must withhold case number 0600090745 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The town must release the remaining information to this requestor.¹

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

¹We note some of the information being released in case numbers 0700060246 and 0600050372 is confidential with respect to the general public. *See* Fam. Code § 58.007(e); *see also* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Therefore, if the town receives another request for this information from an individual who does not have such a right of access, the town must again seek a ruling from this office.

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 "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 453512

Enc. Submitted documents

c: Requestor
(w/o enclosures)