



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2012

Ms. Tiffany Bull
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2012-08052

Dear Ms. Bull:

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# 454784 (Arlington Police Department Reference No. 7034-030612).

The Arlington Police Department (the "department") received a request for all incident reports from 1998 to March 5, 2012 involving two named individuals at a specified address. 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 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.

Fam. Code § 58.007(c), (e). 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), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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). The information you have marked as Exhibit “B” involves children engaged in delinquent conduct that occurred after September 1, 1997. Thus, this information constitutes juvenile law enforcement records that are generally confidential pursuant to section 58.007(c). However, we note the requestor is the parent of the juvenile suspect in call for service #111251011. Therefore, this information may not be withheld from this requestor under section 58.007(c). *See id.* § 58.007(e) (law enforcement records concerning a child may be inspected or copied by the child’s parent or guardian). As you raise no further exceptions to disclosure of this information, call for service #111251011 must be released to this requestor. The department must withhold the remaining information in Exhibit “B,” which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). Upon review, we find the information you have marked as Exhibit “D” was used or developed in an investigation by the department of an alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” as a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Although the requestor is the parent of the child victim named in the report, the requestor is the individual alleged to have committed the abuse. Thus, the requestor does not have a right of access to the submitted information under section 261.201(k). *See id.* § 261.201(k). Accordingly, the department must withhold the information you have marked as Exhibit “D” in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.101 also encompasses the doctrine of common-law 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 satisfied. *Id.* at 681-82. The type of information considered highly 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. 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

instance, the information you have marked as Exhibit "C" reveals that the requestor knows the identity of the individual involved as well as the nature of the information in the subject report. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold the information you have marked as Exhibit "C" in its entirety under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, the information you have marked as Exhibit "D" in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code, and the information you have marked as Exhibit "C" in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released to the 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 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,



Benjamin A. Bellomy
Assistant Attorney General
Open Records Division

BAB/dls

¹Because this requestor has a special right of access to the information being released under section 58.007(e) of the Family Code, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 454784

Enc. Submitted documents

c: Requestor
(w/o enclosures)