



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2012

Mr. Charles H. Weir
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2012-09471

Dear Mr. Weir:

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# 456933 (COSA File No. W006656).

The City of San Antonio (the "city") received a request for nine specified case reports. You claim portions of the submitted information are excepted from disclosure under section 552.108 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."¹ Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. 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(c) of the Family Code. Fam. Code § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Section 58.007 provides in relevant part:

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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.

Id. § 58.007(c). For purposes of section 58.007(c), a “child” is a person ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we case number 90-981597 involves a child engaged in delinquent conduct that occurred after September 1, 1997. Thus, the submitted report is subject to section 58.007(c). None of the exceptions in section 58.007 appear to apply; therefore, case number 90-981597 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.²

Section 552.101 also encompasses information protected by 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 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). Upon review, we find offense report number 80-735293 was used or developed in an investigation of an alleged or suspected child abuse. *See id.*

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

§ 261.001(1)(E) (defining “abuse” for purposes of chapter 261 of the Family Code as including offense of indecency with a child under section 21.11 of the Penal Code); *see also* Penal Code § 21.11(a) (defining “child” for purposes of Penal Code section 21.11 as a person under 17 years of age). You have not indicated the city’s police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information we have marked is confidential under section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.³

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 established. *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. Further, this office has concluded 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); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, we find portions of the remaining information are highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130. The city must withhold the motor vehicle record information we have marked under section 552.130.

In summary, the city must withhold (1) offense report number 90-981597 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, (2) offense report number 80-735293 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, (3) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, and (4) the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Charles Galindo Jr.
Assistant Attorney General
Open Records Division

CG/bs

Ref: ID# 456933

Enc. Submitted documents

c: Requestor
(w/o enclosures)