



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2012

Mr. Stephen A. Cumbie
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2012-15601

Dear Mr. Cumbie:

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# 466441 (Fort Worth PIR No. W018495).

The City of Fort Worth (the "city") received a request for two specified police reports involving the requestor's daughters. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 58.007 of the Family Code, which provides, in pertinent 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.

...

(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:

...

(2) any information that is excepted from required disclosure under [the Act], or other law.

Fam. Code § 58.007(c), (e), (j)(2). 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). You contend section 58.007 is applicable to both of the submitted reports. Upon review, however, we find report number 12-34166 does not constitute a law enforcement record relating to delinquent conduct or conduct indicating a need for supervision of a juvenile suspect or offender. As such, you have failed to demonstrate the applicability of section 58.007 and we find the city may not withhold report number 12-34166 under section 552.101 on this basis. Report number 12-67741 involves a child engaged in delinquent conduct that occurred after September 1, 1997. As such, this information is subject to section 58.007(c). However, you state the requestor is a parent of the juvenile offender. Therefore, in accordance with section 58.007(e), the city may not use section 58.007(c) to withhold this information from this requestor. *See id.* § 58.007(e).

Section 58.007(j)(2), however, provides that information subject to any other exception to disclosure under the Act or law must be redacted. *Id.* § 58.007(j)(2).

Section 552.101 of the Government Code also encompasses 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.

...

(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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Id. § 261.201(a), (k), (l)(2). Because report number 12-67741 pertains to an investigation of alleged or suspected child abuse, the information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” or “minor” for purposes of chapter 261 of the Family Code). However, the submitted information indicates that the requestor is a parent of the child victim in report number 12-67741 and is not the individual alleged to have committed the alleged or suspected abuse. *See id.* § 261.201(k). Thus, the city may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* Section 261.201(l)(2), however, states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address your remaining argument against disclosure.

You also raise common-law privacy for the submitted reports. 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. However, in this instance, the requestor is the parent of the children whose privacy rights are implicated. Pursuant to section 552.023 of the Government Code, “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a)-(b). Thus, the requestor has a right of access to his children’s private information pursuant to section 552.023, and the city may not withhold this information under section 552.101 of the Government Code on the basis of common-law privacy.

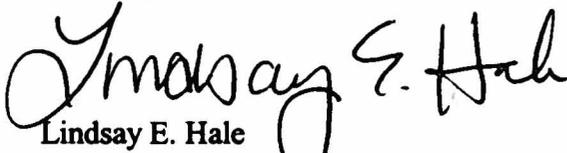
Section 552.130(a)(1) of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a)(1). We find the city must withhold the driver’s license number you have marked under section 552.130(a)(1) of the Government Code.

In summary, the city must withhold the driver's license number you have marked under section 552.130 of the Government Code. The city 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 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 466441

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because the information being released in this instance includes information that is confidential with respect to the general public, if the city receives another request for this information from an individual other than this requestor, the city must again seek a ruling from this office.