



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2012

Ms. Lysia H. Bowling
City Attorney
Office of the City Attorney
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902-1751

OR2012-19149

Dear Ms. Bowling:

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# 472237.

The San Angelo Police Department (the "department") received a request for information pertaining to a specified case. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.147 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 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.

...

(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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

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

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)-(l). The submitted information pertains to an investigation of alleged or suspected child abuse and is within the scope of section 261.201 of the Family

Code. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes indecency with child, sexual assault, and aggravated sexual assault under Penal Code sections 21.11, 22.011, and 22.021); *see also* Penal Code §§ 21.11 (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age), 22.011(c)(1) (defining “child” for purposes of sections 22.011 and 22.021 as “a person younger than 17 years of age”), 22.021(b)(1). In this instance, however, the submitted information indicates that the requestor is a parent of one of the child victims listed in the information at issue and is not the individual alleged to have committed the suspected abuse. *See* Fam. Code § 261.201(k). Thus, the information at issue may not be withheld from this requestor on the basis of section 261.201(a). *Id.*

Subsections 261.201(1)(1) and (3), however, state the personally identifiable information of a victim or witness under the age of eighteen who is not the requestor’s child and the identity of the reporting party must be withheld. *Id.* § 261.201(1)(1), (3). Upon review, we find the submitted documents contain identifying information of child victims and witnesses who are not the requestor’s children and information that identifies the reporting party. Thus, the department must withhold the information we have marked in the submitted documents under section 552.101 of the Government Code in conjunction with subsections 261.201(1)(1) and (3).

You have also submitted a video recording and a separate recording of only the audio portion of the video. Upon review, we find the submitted video recording’s audio contains identifying information of child victims and witnesses who are not the requestor’s children and information that identifies the reporting party. We note a reporting party’s voice tends to reveal the reporter’s identity. You state the department does not have the technological capability to redact information from the submitted video recording. The audio of the video recording is intertwined with the video portion of the recording. Accordingly, the department must withhold the video recording in its entirety under section 552.101 of the Government Code in conjunction with subsections 261.201(1)(1) and (3).

The separate audio recording also contains identifying information of child victims and witnesses who are not the requestor’s children and information that identifies the reporting party. The separate audio recording is not intertwined with a video recording. As previously noted, you state the department does not have the technological capability to redact information from the submitted recordings. However, because the department had the capability to copy the separate audio recording in order to submit the requested information for our review, we believe the department has the capacity to produce a copy of only the non-confidential portions of the separate audio recording. Therefore, the department may not withhold the separate audio recording in its entirety. Nevertheless, the department must withhold the types of information we have indicated on the separate audio recording under section 552.101 of the Government Code in conjunction with subsections 261.201(1)(1) and (3).

None of the remaining information you seek to withhold under subsection 261.201(1)(1) or (3) identifies either a victim or witness who is not the requestor's child or an individual who made the report of the alleged or suspected abuse. Thus, the department may not withhold any of the remaining information under section 552.101 on either of these bases. Subsection 261.201(1)(2) 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(1)(2). Thus, we will address your remaining arguments for the remaining information.

Section 552.101 of the Government Code also encompasses information protected by other statutes such as 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.

Id. § 58.007(c). 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 at the time of the conduct. *See id.* § 51.02(2). The information we have marked involves a child engaged in delinquent conduct that occurred after September 1, 1997. As such, this information constitutes a juvenile law enforcement record that is confidential pursuant to section 58.007(c). It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. None of the remaining information you have marked constitutes a juvenile 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 to the remaining information and the department may not withhold any of the remaining information under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses medical records made confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. Upon review, we find the information we have marked in Exhibit A-3 constitutes medical records. As such, the marked medical records must be withheld under section 552.101 of the Government Code in conjunction with the MPA. However, we find none of the remaining information in Exhibit A-3 constitutes medical records for the purposes of the MPA; thus, the department may not withhold any of the remaining information on this basis.

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. We note the doctrine of common-law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007. Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information on the separate audio recording is subject to section 552.1175 of the Government Code.¹ Section 552.1175 applies to information pertaining to peace officers that the department does not hold in an employment context and provides, in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Upon review, we determine the department must withhold the types of information we have indicated on the separate audio recording under section 552.1175 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We find the department must withhold the information we have marked in the documents and the license plate number on the separate audio recording under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail

¹The 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).

address we have marked in the remaining information is not a type specifically excluded by section 552.137(c). Accordingly, the department must withhold the e-mail address we have marked under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release.²

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *Id.* § 552.147. Upon review, we find the department may withhold the remaining social security numbers you have marked and we have marked in the submitted documents and the social security number on the separate audio recording under section 552.147 of the Government Code.³

In summary, the department must withhold the following: (1) the information we have marked in the submitted documents, the video recording in its entirety, and the types of information we have indicated on the separate audio recording under section 552.101 of the Government Code in conjunction with subsections 261.201(l)(1) and (3) of the Family Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; (3) the medical records we have marked in Exhibit A-3 under section 552.101 of the Government Code in conjunction with the MPA; (4) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (5) the types of information we have indicated on the separate audio recording under section 552.1175 of the Government Code; (6) the information we have marked in the submitted documents and the license plate number on the separate audio recording under section 552.130 of the Government Code; and (7) the e-mail address we have marked under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release. The department may withhold the remaining social security numbers you have marked and we have marked in the documents and the social security number on the separate audio recording under section 552.147 of the Government Code. The department must release the remaining information.⁴

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

³We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

⁴We note the information being released in this instance includes information that is confidential with respect to the general public. *See* Fam. Code. § 261.201(k). Therefore, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 472237

Enc. Submitted documents

c: Requestor
(w/o enclosures)