



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2013

Mr. Jeffrey L. Moore
For City of Roanoke
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2013-00648

Dear Mr. Moore:

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# 475771.

The City of Roanoke (the "city"), which you represent, received a request for specified offense and CAD reports. You state some of the requested information is being provided to the requestor. You claim 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. The relevant language of section 58.007 reads:

(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.

Fam. Code § 58.007(c). Under section 58.007, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007, a “child” is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Upon review, we find the reports we have marked pertain to juvenile delinquent conduct occurring after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Therefore, the marked information is confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.¹ However, we find the remaining information does not involve a juvenile as a suspect, or offender. Therefore, you have failed to demonstrate the information at issue consists of juvenile law enforcement records for purposes of section 58.007(c). Accordingly, no portion of the remaining information may be withheld under section 552.101 on this basis.

Section 552.101 of the Government Code encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 intimate and 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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and handicaps).

The city generally asserts the reports you have marked are protected by common-law privacy and should be withheld in their entirety. In this instance, however, you do not demonstrate,

¹As our ruling is dispositive for this information, we need not address your remaining arguments against its release.

nor do the reports reflect, this a situation in which the reports at issue must be withheld in their entirety on the basis of common-law privacy. Consequently, the city may not withhold the reports in their entirety under section 552.101 of the Government Code. However, upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern. Therefore, the city must withhold the marked information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). Therefore, the city must withhold the driver's license number you have marked under section 552.130.²

In summary, the city 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 and common-law privacy. The city must withhold the driver's license number you have marked under section 552.130 of the Government Code. The remaining information must be released.

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

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²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e).

Ref: ID# 475771

Enc. Submitted documents

c: Requestor
(w/o enclosures)