



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2013

Mr. Bryan Scott McWilliams
Public Safety Legal Advisor
Assistant City Attorney
City of Amarillo
200 Southeast Third Avenue
Amarillo, Texas 79101-1514

OR2013-03230

Dear Mr. McWilliams:

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# 479726 (Amarillo ID# 12-2100).

The Amarillo Police Department (the "department") received a request for all information pertaining to the requestor's client. 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 the doctrine of common-law privacy, which protects information that (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 types 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. *See* 540 S.W.2d at 683. Generally, only highly intimate information that implicates

the privacy of an individual is withheld. However, in certain instances, where it is demonstrated 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 submitted information reveals the requestor is a representative of a person who knows the identity of the individual, as well as the nature of the incident involved in report number 2004-0109977. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold report number 2004-0109977, which we have marked, in its entirety under section 552.101 in conjunction with common-law privacy.¹

Section 552.101 also encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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

¹As our ruling is dispositive, we need not address your argument against disclosure of this information.

representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). You contend some of the remaining information is subject to section 261.201 of the Family Code. Upon review, we agree some of the remaining reports pertain to investigations of alleged or suspected child abuse or neglect. *See id.* §§ 261.001(1)(E) (defining “abuse” as including indecency with a child under Penal Code section 21.11), (4) (defining “neglect” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 as 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); *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). Accordingly, we find two of the remaining reports are within the scope of section 261.201 of the Family Code. We find none of the exceptions to confidentiality apply to report number 2011-0004631. As you have not indicated the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Accordingly, the department must withhold report number 2011-0004631, which we have marked, under section 552.101 in conjunction with section 261.201 of the Family Code.

We note the requestor is a representative of the parent of the child victim listed in the remaining report, report number 2007-0025411, and is not alleged to have committed the suspected abuse. However, we note the child victim listed in the report at issue is now at least eighteen years old. Thus, we find the requestor no longer has a right of access to her adult child’s records under section 261.201(k). *See* Fam. Code § 261.201(k). Therefore, the department must also withhold report number 2007-0025411, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.101 also encompasses section 58.007 of the Family Code, which protects the law enforcement records of juveniles. Section 58.007 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.

Id. § 58.007(c), (e). You contend the remaining information at issue is confidential under section 58.007(c) of the Family Code. Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007(c) of Family Code). The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See id.* § 51.02(2) (defining "child" for purposes of section 58.007(c) of Family Code). Upon review, we agree the remaining reports involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. As such, we find the information at issue is subject to section 58.007(c) of the Family Code. It does not appear any of the exceptions to confidentiality under section 58.007 apply to report number 2005-0026664. Accordingly, the department must withhold report number 2005-0026664, which we have marked, under section 552.101 in conjunction with section 58.007(c) of the Family Code.

We note although the requestor is a representative of a parent of at least one of the juvenile suspects listed in the remaining reports subject to section 58.007, these juveniles are now at least eighteen years old. Accordingly, the requestor no longer has a right of access to her adult children's records under section 58.007(e). *See id.* § 58.007(e). Therefore, the department must withhold the remaining reports we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

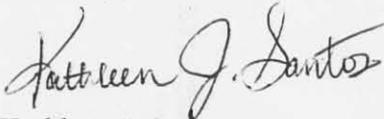
In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and sections 261.201(a) and 58.007(c) of the Family Code.

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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/som

Ref: ID# 479726

Enc. Submitted documents

c: Requestor
(w/o enclosures)