



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2013

Ms. L. Carolyn Nivens
Counsel for the City of League City
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2013-13193

Dear Ms. Nivens:

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# 494892 (City Reference No. PD# 2696/B.Williams/File No. 3607-1/B.Williams).

The League City Police Department (the "department"), which you represent, received a request for all records pertaining to a specified address. You state the department has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 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). 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 state the submitted information involves a child engaged in delinquent conduct that occurred after September 1, 1997. However, upon review, we find the submitted information does not identify a suspect or offender who is ten years of age or older and under seventeen years of age. As such, section 58.007 is not applicable and the department may not withhold any of the submitted information under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in relevant part as follows:

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

Id. § 261.201(a), (k). You state the submitted information is related to investigations of alleged or suspected child abuse or neglect conducted by the department and referred to Child Protective Services. *See id.* §§ 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of this section 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). We note the requestor is the child victim listed in one of the submitted reports. However, the requestor does not have a right of access under section 261.201(k) of the Family Code to the report listing him as a child victim because he is not at least eighteen years of age. Upon review, we find the department must withhold the information in Exhibits B and C in its entirety, as well as the information we have marked in Exhibit D, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ However, we find you have failed to demonstrate any portion of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2), or a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the information in Exhibit A pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to Exhibit A.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). However, the basic information

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

does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* Thus, with the exception of the basic front page information, which you state you have released, you may withhold Exhibit A under section 552.108(a)(2) of the Government Code.²

You state the remaining information is confidential pursuant to common-law privacy. Section 552.101 of the Government Code 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 met. *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 id.* at 683. This office has also found common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *Cf.* Fam. Code § 261.201. Upon review, we find 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. However, although some of the remaining information you seek to withhold contains information which would ordinarily be protected by common-law privacy, the requestor is the individual whose privacy interests are at issue. Accordingly, the requestor has a special right of access to his own information under section 552.023 of the Government Code. *See* Gov't Code § 552.023 (person has a special right of access to information excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Furthermore, we find you have not demonstrated how any of the remaining information pertaining to individuals other than the requestor is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any of the remaining information under section 552.101 of the Government Code 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, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we find portions of the remaining information consist of motor vehicle record information. We note section 552.130 protects personal privacy. Therefore, the requestor has a right of access to his own driver's license information under section 552.023 of the Government Code and it

²As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

may not be withheld under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the department must withhold the motor vehicle record information pertaining to individuals other than the requestor, which we have marked, under section 552.130 of the Government Code.³

In summary, the department must withhold Exhibits B and C under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which you state you have released, the department may withhold Exhibit A under section 552.108(a)(2) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information we have marked under section 552.130 of the Government Code. The department must release the remaining information to the requestor.⁴

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/som

³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to 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* Gov't Code § 552.130(d), (e).

⁴As previously noted, the requestor has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 494892

Enc. Submitted documents

c: Requestor
(w/o enclosures)