



ATTORNEY GENERAL OF TEXAS
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October 29, 2013

Mr. Juan R. Molina
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P.O. Box 190
Weslaco, Texas 78596

OR2013-18801

Dear Mr. Molina:

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# 503861.

The City of Mercedes (the "city"), which you represent, received a request for the offense records of the requestor's two juvenile sons. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must first address the city's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* The city received the request for information on July 30, 2013; therefore, the city's ten-day deadline was August 13, 2013. However, you did not request a ruling from this office until August 20, 2013. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the city failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *Id.* § 552.302; *Simmons v.*

Kuzmich, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege, as well as section 552.108 of the Government Code. The purpose of the informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person. Thus, the informer's privilege, unlike other claims under section 552.101, is discretionary and may be waived. *See* Open Records Decision No. 549 at 6 (1990). Section 552.108 is also a discretionary exception that protects a governmental body's interest and may be waived. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under section 552.101 in conjunction with the common-law informer's privilege or under section 552.108. However, because your other claims under section 552.101 and your claim under section 552.135 can provide compelling reasons for non-disclosure, we will consider the applicability of these exceptions to the submitted information. We note portions of the submitted information are subject to section 552.130 of the Government Code, which is also a compelling reason for nondisclosure.¹

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 of the Government Code 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

¹ The 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).

(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:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

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

Fam. Code § 58.007(c), (e), (j). 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). Upon review, we agree that, with the exception of incident report number 1203991, the submitted information is within the scope of section 58.007(c). In this instance, however, the requestor is the mother of two of the juvenile offenders listed in the submitted information. Therefore, the requestor has a right to inspect or copy law enforcement records concerning her children, and the city may not withhold the submitted information from this requestor under section 552.101 of the Government Code in conjunction with subsection 58.007(c) of the Family Code. *See id.* § 58.007(e).

However, subsection 58.007(j)(1) provides personally identifiable information concerning any other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). For the purposes of section 58.007(j)(1), a juvenile victim or witness is a person who is under eighteen years of age. Upon review, we find the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with subsection 58.007(j)(1) of the Family Code. In incident report number 1104483, it is unclear whether the second juvenile offender is also the son of the requestor. Thus we must rule conditionally. To the extent the second juvenile offender listed in incident report

number 1104483 is not the son of the requestor, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with subsection 58.007(j)(1) of the Family Code. To the extent the second juvenile offender listed in incident report number 1104483 is also the son of requestor, the city may not withhold the marked information from the requestor on the basis of subsection 58.007(j)(1). Additionally, subsection 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). Accordingly, we will address your remaining arguments against disclosure.

Section 552.101 of the Government Code excepts from disclosure information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(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.

(1) 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). Upon review, we find some of the submitted information consists of information used or developed in investigations of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code). Thus, the information at issue is subject to section 261.201 of the Family Code. We note the requestor is a parent of the child victims at issue. However, we note the requestor is alleged to have committed the suspected abuse in incident report number 1307779. Thus, the requestor does not have a right of access to that information under section 261.201(k). *See id.* § 261.201(k). Therefore, the city must withhold incident report number 1307779, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, the requestor is not alleged to have committed the suspected abuse in the remaining information at issue. Thus, pursuant to section 261.201(k), the remaining information at issue may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* § 261.201(k).

We note that subsection 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Thus, the city must withhold the identifying information we marked in incident report number 1200244 under section 552.101 of the Government Code in conjunction with subsection 261.201(l)(3) of the Family Code. Additionally, subsection 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will address your remaining claims under sections 552.101 and 552.135 of the Government Code for the information at issue.

Section 552.101 of the Government Code also 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 established. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note the doctrine of common-law privacy generally protects the identifying

information of juvenile offenders and juvenile victims of abuse and neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007; *cf.* Fam. Code § 261.201.

In this instance, you seek to withhold the remaining information under section 552.101 in conjunction with common-law privacy. However, as noted above, the requestor is a parent of the juvenile children whose privacy interests are at issue. *See* Gov't Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the requestor has a right of access to information pertaining to her children that would otherwise be confidential under common-law privacy. Accordingly, the city may not withhold the remaining information from this requestor under section 552.101 on the basis of common-law privacy.

Section 552.135 of the Government Code provides, in part:

(a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov’t Code § 552.135. We note section 552.135 is applicable only to information held by a school district. *See id.* § 552.135(d); *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection). In this instance, the submitted information is held by the city. We therefore determine section 552.135 is not applicable to any of the information at issue. Accordingly, the city may not withhold any of the information pursuant to section 552.135 of the Government Code.

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. Accordingly, the city must withhold the driver’s license information we have marked under section 552.130.²

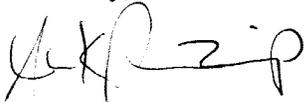
² We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the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

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with subsection 58.007(j)(1) of the Family Code; however, if the second juvenile offender listed in incident report number 1104483 is also the son of the requestor, then the city may not withhold the marked information in incident report number 1104483 on that basis. The city must withhold incident report number 1307779 from this requestor in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with subsection 261.201(1)(3) of the Family Code. The city must withhold the driver's license information we have marked under section 552.130 of the Government Code. The city must release the remaining information to the requestor.

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,



Alia K. Plasencia-Bishop
Assistant Attorney General
Open Records Division

AKPB/eb

Ref: ID# 503861

Enc. Submitted documents

c: Requestor
(w/o enclosures)