



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2013

Ms. Michele Tapia
Assistant City Attorney
Office of the City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2013-20092

Dear Ms. Tapia:

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# 505994.

The Carrollton Police Department (the "department") received a request for copies of police reports used for purposes of calculating the offenses that serve as the basis for including the Villa Siena Apartments in the Carrollton Mandatory Crime Reduction Program. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.137 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. Section 552.101 encompasses information other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c). 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* Fam. Code § 51.02(2). 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.

Id. § 58.007(c). Upon review, we conclude the information submitted as Exhibit B consists of law enforcement records involving juvenile delinquent conduct and conduct indicating a need for supervision occurring after September 1, 1997 and is, therefore, subject to section 58.007(c). *See id.* §§ 51.03(a) (defining “delinquent conduct” for purposes of section 58.007), 51.03(b) (defining “conduct indicating a need for supervision” for purposes of section 58.007). None of the exceptions in section 58.007 apply. Therefore, Exhibit B is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Id. § 261.201(a). Upon review, we find Exhibits D and E were used or developed in investigations of alleged or suspected child abuse conducted by the department under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Family Code chapter 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as a person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes). Therefore, the information at issue falls within the scope of section 261.201(a). You do not indicate the department has adopted a rule that governs the release of this information; therefore, we assume that no such regulation exists. Given that assumption, we conclude the department must withhold Exhibits D and E under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹

Section 552.101 of the Government Code encompasses the doctrine of 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved as well as the nature of certain incidents, the submitted information must be withheld in its entirety to protect the individual’s privacy.

You seek to withhold a portion of Exhibit F and Exhibit C in its entirety on the basis of common-law privacy. Upon review, we agree the information you have marked in Exhibit F satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information you have marked in Exhibit F under section 552.101 in conjunction with common-law privacy. Although you seek to withhold Exhibit C in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the information must be withheld in its entirety on the basis of common-law privacy. Upon review, however, we find portions of Exhibit C satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked in Exhibit C under section 552.101 in conjunction with common-law privacy. The department has failed to demonstrate the remaining information in Exhibit C is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any of the

¹As our ruling is dispositive, we need not address your remaining argument against disclosure for Exhibits D and E.

remaining information in Exhibit C under section 552.101 in conjunction with common-law privacy.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state release of the information you have marked in Exhibit F would interfere with a pending criminal prosecution. Based on this representation and our review of the submitted information, we conclude the release of the information you have marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the department may withhold the information you have marked in Exhibit F under section 552.108(a)(1) 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). Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The addresses you have marked are not of a type specifically excluded by section 552.137(c). Accordingly, the department must withhold the e-mail addresses you have marked under section 552.137, unless the owners of the addresses affirmatively consent to their release.² *See id.* § 552.137(b).

In summary, the department must withhold Exhibit B pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold Exhibits D and E under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the information we have marked in Exhibit C and the information you have marked in Exhibit F pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the information you have marked in Exhibit F under section 552.108(a)(1) of the Government Code. The department must withhold the e-mail

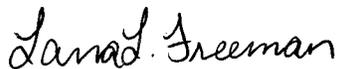
²Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

addresses you have marked under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release. The department must release the remaining information.

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,



Lana L. Freeman
Assistant Attorney General
Open Records Division

LLF/akg

Ref: ID# 505994

Enc. Submitted documents

c: Requestor
(w/o enclosures)