



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2014

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2014-00738

Dear Mr. Weir:

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# 510832 (COSA File No. W019320).

The City of San Antonio (the "city") received a request for three specified incident reports. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 section 58.007 of the Family Code which provides in relevant 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

(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). Section 58.007(c) is applicable to law enforcement records of juvenile delinquent conduct that occurred on or after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of section 58.007). 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 reported conduct. *See id.* § 51.02(2). Report 13213455 pertains to a juvenile suspect who was ten years of age or older and under seventeen years of age at the time of the incident that is the subject of the report. Further, report 13213455 involves juvenile delinquent conduct that occurred after September 1, 1997. You do not inform us, and it does not appear, any of the exceptions in section 58.007 apply to the information at issue. Therefore, report 13213455 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.¹ However, upon review, we find you have failed to demonstrate the remaining reports consist of law enforcement records of juvenile delinquent conduct. Thus, the remaining reports may not be withheld under section 552.101 in conjunction with section 58.007.

Section 552.101 also encompasses section 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.

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

Id. § 261.201(a). You state a portion of the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect by the city's police department. Upon review, we find report 12258374 falls within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (definition of "abuse" for purposes of chapter 261 of the Family Code includes sexual assault under Penal Code section 22.011; *see also id.* § 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).

As you do not indicate the city's police department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine report 12258374 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Therefore, the city must withhold report 12258374 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, upon review, we find you have failed to demonstrate the remaining report was used or developed in an investigation of alleged or suspected child abuse or neglect by the city's police department. Accordingly, the city may not withhold the remaining report under section 552.101 in conjunction with section 261.201.

Section 552.101 also 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 generally 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 information must be withheld in its entirety to protect the individual's privacy. Although you assert the remaining report is confidential in its entirety pursuant to common-law privacy, we find this is not a situation where all of this information must be withheld to protect any individual's privacy interest. However, upon review, we find the information we have marked in report 13086062 satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(1) of the Government Code exempts 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).

Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that some of the information submitted to our office pertains to a case that is still open and that release of this information would jeopardize the investigation and prosecution of this case. However, you have submitted multiple reports to this office, and you have not identified which case is still pending investigation or prosecution. Thus, we find you have failed to demonstrate the applicability of section 552.108 to the remaining information. *See* Gov't Code §§ 552.301(e)(1)(A), .301(e)(2) (governmental body must label information to indicate which exceptions apply to which parts of information). Accordingly, the city may not withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the city must withhold report 13213455 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, report 12258374 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, and the information we have marked in report 13086062 under section 552.101 of the Government Code in conjunction with common-law privacy. 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.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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/dls

Ref: ID# 510832

Enc. Submitted documents

c: Requestor
(w/o enclosures)