



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 13, 2014

Ms. Andrea D. Russell  
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OR2014-10244

Dear Ms. Russell:

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# 526451.

The Southlake Police Department (the "department"), which you represent, received a request for the requestor's client's personnel file, specified internal affairs investigations, and information pertaining to discipline of department officers for violations of specified rules for a specified time period. You state the department will withhold certain information pursuant to section 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).<sup>1</sup> You state the department will release some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a police officer's Texas Commission on Law Enforcement ("TCOLE") identification number. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

not the kind of information made public under section 552.021 of the Government Code. We understand the officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database and may be used as an access device number on the TCOLE website. Accordingly, we find the TCOLE number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE number in the submitted information is not subject to the Act and need not be released to the requestor.

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, which 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.

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 at the time of the conduct at issue. *See id.* § 51.02(2). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. You contend the information you marked in Exhibit B-5 is subject to section 58.007(c). We are unable to determine the age of an offender in incident number 07SP017348. Accordingly, we must rule conditionally. It does not appear any of the exceptions to confidentiality under section 58.007 apply in this instance. Thus, to the extent the offender identified in incident number 07SP017348 was ten years of age or older and under seventeen years of age at the time of the conduct at issue, incident

number 07SP017348 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. However, to the extent the offender at issue was not ten years of age or older and under seventeen years of age at the time of the conduct at issue, incident number 07SP017348 is not confidential pursuant to section 58.007(c) and may not be withheld under section 552.101 of the Government Code on that basis. Further, we find the remaining information in Exhibit B-5 does not constitute a juvenile law enforcement record relating to delinquent conduct or conduct indicating a need for supervision of a juvenile suspect or offender. Accordingly, we find the department has not demonstrated the applicability of section 58.007(c) to the remaining information in Exhibit B-5; thus, the department may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code 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.

*Id.* § 261.201(a). You contend the information in Exhibit B-4 pertains to an investigation of alleged or suspected child abuse or neglect and falls within the scope of section 261.201 of the Family Code. *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 information at issue relates to an administrative investigation by the department of a police officer. Upon review, we find you have failed to demonstrate how the information in Exhibit B-4 involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 of the Family Code, or how this information was used or developed in an investigation under chapter 261. Accordingly, we conclude the department may not withhold the information in Exhibit B-4 under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by

the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we find the information in Exhibit B-3 consists of CHRI the department must withhold under section 552.101 in conjunction with section 411.083 of the Government Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

- (a) All information submitted to the [TCOLE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.
- (b) Except as provided by this subchapter, a [TCOLE] member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. You assert the information in Exhibit B-1 is subject to section 1701.454. We note Exhibit B-1 contains F-5 Reports of Separation of Licensee, which we understand were submitted to TCOLE. You state the officer at issue did not resign or was not terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the department must withhold the F-5 forms in Exhibit B-1 under section 552.101 in conjunction with section 1701.454 of the Occupations Code.

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<sup>2</sup>We note the requestor may obtain his client's CHRI from DPS. *See* Gov't Code § 411.083(b)(3).

Section 552.101 of the Government Code also encompasses chapter 550 of the Transportation Code. Exhibit B-2 contains a CR-3 accident report form completed pursuant to Chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. In this instance, the requestor has not provided the department with the requisite pieces of information pursuant to section 550.065(c)(4). Accordingly, the department must withhold the CR-3 report in Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code 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). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note some of the information you seek to withhold does not identify the individual to whom the information at issue pertains. Therefore, this information does not implicate any individual's right to privacy. Furthermore, we find none of the remaining information in Exhibit B-6 is highly intimate or embarrassing information of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You state the department will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code.<sup>3</sup> Section 552.130 of the Government Code

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<sup>3</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a) without the necessity of seeking a decision from the attorney general. *See* 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).

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 the video recordings in Exhibit B-7 contain discernible motor vehicle record information. You state the department lacks the technological capability to redact the confidential information in the video recordings. Accordingly, the department must withhold the video recordings in Exhibit B-7 in their entireties under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983).

In summary, to the extent the offender identified in incident number 07SP017348 was ten years of age or older and under seventeen years of age at the time of the conduct at issue, incident number 07SP017348 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. The department must withhold (1) Exhibit B-3 under section 552.101 in conjunction with section 411.083 of the Government Code; (2) the F-5 forms in Exhibit B-1 under section 552.101 in conjunction with section 1701.454 of the Occupations Code; (3) the CR-3 report in Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; (4) the information we marked in Exhibit B-6 under section 552.101 of the Government Code in conjunction with common-law privacy; and (5) the video recordings in Exhibit B-7 in their entireties under section 552.130 of the Government Code. 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](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,

  
Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 526451

Enc. Submitted documents

c: Requestor  
(w/o enclosures)