



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2014

Ms. Sarah R. Martin
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2014-12114

Dear Ms. Martin:

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# 529023 (PD Reference No. 15177).

The Arlington Police Department (the "department") received a request for multiple specified incident reports occurring at or near a specified location. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the department has not submitted any information pertaining to some of the requested reports. To the extent any information related to any of the remaining requested reports existed on the date the department received the request, we assume the department has released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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 section 261.201(a) 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 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.

Fam. Code § 261.201(a). You state the information in Exhibit C and Exhibit D was used in investigations of alleged child abuse under chapter 261 of the Family Code. *See id.* §§ 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), 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code). You do not indicate the department has adopted any rules that would permit the release of the information at issue. Therefore, we assume no such regulation exists. Given that assumption and based on our review, we conclude the information in Exhibit C and the information we have marked in Exhibit D is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we find you have failed to demonstrate how the remaining information in Exhibit D consists of a report of child abuse or neglect made under chapter 261 of the Family Code or how this information was used or developed in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). Therefore, we conclude section 261.201 is not applicable to report number 12-26254 or call sheet number 121260873, and that information may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides, in 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:

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

- (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); *see id.* § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, we find the information we have marked in Exhibit D involves a juvenile offender, so as to fall within the scope of section 58.007(c). It does not appear that any of the exceptions in section 58.007 apply; therefore, the department must withhold the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

The department asserts the remaining information is excepted under section 552.101 of the Government Code in conjunction with common-law privacy. 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). However, we note privacy is a personal right that lapses at death, and, thus, common-law privacy is not applicable to information that relates to only a deceased individual. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981).

Generally, only highly intimate or embarrassing information implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, an entire report must be

withheld to protect the individual's privacy. Upon review, we find you have not demonstrated, and the remaining information does not reflect, this is a situation in which the information at issue must be withheld in its entirety to protect an individual's privacy interest. However, we find the information we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of 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.² See Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 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). *Id.* § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

In summary, the department must withhold the information in Exhibit C and 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. The department must withhold the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 58.007 of the Family 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 section 552.130 of the Government Code. The department must withhold the information we have marked under section 552.137 of the Government Code, unless the

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

owner of the e-mail address affirmatively consents to its disclosure. The remaining information must be released.³

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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 529023

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the submitted information contains a social security number. 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).

