



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2009

Ms. S. McClellan
Assistant City Attorney
Criminal Law and Police Section
1400 South Lamar
Dallas, Texas 75215

OR2009-06908

Dear Ms. McClellan:

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# 343663 (Dallas Request No. 2009-1703).

The Dallas Police Department (the "department") received a request for a specified incident report and all reports for a specified address during a specified period of time. You claim that 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.¹

Initially, we note that some of the responsive information is the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2008-16398 (2008) and 2007-07009 (2007). As we have no indication that the law, facts, and circumstances surrounding these prior rulings have changed, you must continue to rely upon Open Records Letter Nos. 2008-16398 and 2007-07009 as previous determinations and withhold or release the information at issue in accordance with those

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

decisions. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous rulings, we will address the submitted arguments.

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 confidentiality provisions 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. For purposes of section 58.007, "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 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 Subchapter B, D, and E.

Id. § 58.007(c). Report number 0337064-R pertains to a report of a juvenile runaway that occurred after September 1, 1997. This conduct is within the scope of section 58.007. *See id.* § 51.03(b)(3) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). Thus, section 58.007(c) is applicable to report number 0337064-R. However, report number 0918305-R does not identify a juvenile suspect or offender engaged in delinquent conduct or conduct indicating a need for supervision for the purposes of this section. Thus, you have failed to demonstrate that report number 0918305-R is a juvenile law enforcement record and it may not be withheld under this section. Accordingly, the department must

withhold report number 0337064-R under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 also encompasses information section 261.201(a) of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

Id. § 261.201. You assert that report number 0201215-R consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 and, thus, this information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261); *see also 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). You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, report number 0201215-R is confidential pursuant to section 261.201 of the Family Code and the department must withhold it from disclosure under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand that the City of Dallas is within an emergency communication district that is subject to section 772.318. Therefore, to the extent the originating telephone numbers of the 9-1-1 callers you have marked were supplied by a 9-1-1 service supplier, this information is

confidential under section 772.318 of the Health and Safety Code and must be withheld from disclosure under section 552.101 of the Government Code; however, if this information was not provided by a 9-1-1 service supplier to the emergency communication district, this information may not be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy 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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find some of the information you have marked, and the additional information we have marked, is highly intimate or embarrassing and not of legitimate public concern. However, we determine that the information we have marked for release is not intimate or embarrassing. Therefore, except for the information we have marked for release, the department must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle information you have marked, and the additional information we have marked, pursuant to 552.130 of the Government Code.

Section 552.147 of the Government Code states that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.² Upon review, we agree the department may withhold the social security numbers you have marked under section 552.147 of the Government Code.

In summary, the department must continue to rely upon Open Records Letter Nos. 2008-16398 and 2007-07009 as previous determinations and withhold or release the information at issue in accordance with those decisions. The department must withhold report number 0337064-R under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code and report number 0201215-R under section 552.101

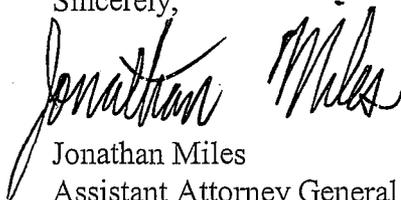
²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

in conjunction with section 261.201 of the Family Code. To the extent the originating telephone numbers of the 9-1-1 callers you have marked were supplied by a 9-1-1 service supplier, the phone numbers are confidential under section 772.318 of the Health and Safety Code and must be withheld from disclosure under section 552.101 of the Government Code. Except for the information we have marked for release, the department must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the Texas motor vehicle information you have marked, and the additional information we have marked, pursuant to 552.130 of the Government Code. The department may withhold the social security numbers you have marked under section 552.147 of the Government Code. 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 343663

Enc. Submitted documents

c: Requestor
(w/o enclosures)