



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2009

Ms. Cara Leahy White
Taylor, Olson, Adkins, Sralla, & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2009-08799

Dear Ms. White:

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# 346989.

The City of Southlake (the "city"), which you represent, received five requests from the same requestor for four specified domestic disputes and another specified incident report. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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. This section encompasses information protected by other statutes, 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. Section 58.007(c) provides as follows:

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.

Fam. Code § 58.007(c). For purposes of section 58.007, a “child” is defined as a person ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party; it is only applicable to juveniles listed as suspects or offenders. *See id.* §§ 58.007, 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). Although you seek to withhold incident report number 08SP040861 under section 58.007, we find that this report does not identify a juvenile suspect or offender. Accordingly, we find that the city has not demonstrated the applicability of section 58.007(c) of the Family Code to incident report number 08SP040861, and the city may not withhold it under section 552.101.

Section 552.101 also encompasses 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(a). Case number 2005-00003479 was used or developed in an investigation of an alleged injury to a child, and is, therefore, within the scope of section 261.201. *See id.* §§ 261.001(1) (defining “abuse” for the purposes of chapter 261 of the Family Code), 261.003(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 do not indicate that the city has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude that case number 2005-00003479 is confidential.

pursuant to section 261.201 of the Family Code, and the city must withhold it in its entirety under section 552.101 of the Government Code.¹

You claim the remaining information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. See Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *Id.* You state that the remaining information pertains to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

We note, and you acknowledge, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). However, because you argue that case number 2005-16127 should be withheld in its entirety, we will address your arguments under section 552.101 of the Government Code and common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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 type 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. 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 entire report must be withheld to protect the individual's privacy. Although you seek to withhold case number 2005-16127 in its entirety, you have not demonstrated, nor does it otherwise appear, that this is a situation where the submitted information must be withheld in its entirety on the basis of common-law privacy. Accordingly, case

¹ We note that the requestor, as father of the child who is the subject of alleged abuse and neglect, may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services ("DFPS"). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules: shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if DFPS has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure. See Fam. Code § 261.201(g).

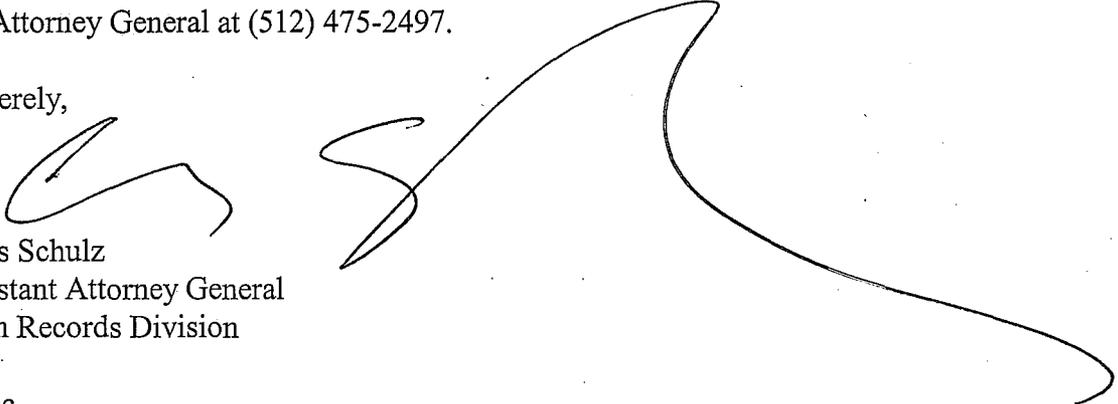
number 2005-16127 may not be withheld in its entirety under common-law privacy. However, we agree a portion of the basic information in case number 2005-16127 contains information that is highly intimate or embarrassing and not of legitimate public interest. Accordingly, we have marked information that must be withheld under section 552.101 in conjunction with common-law privacy. Thus, you must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.²

In summary, the city must withhold the information we have marked under section 552.101 in conjunction with: (1) section 261.201 of the Family Code, and (2) common-law privacy. With the exception of basic information, the city may withhold the remaining information under section 552.108(a)(2) 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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 346989

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

² As our ruling is dispositive, we need not address your remaining arguments against disclosure.