



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 2, 2009

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

OR2009-09174

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# 347799 (City of Dallas Request Number: 2009-3028).

The Dallas Police Department (the "department") received a request for eleven categories of information pertaining to a specified address for a specific time period. 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.

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 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.

Fam. Code § 261.201(a). You state report numbers 0231157-V and 0231158-V were used or developed in an investigation of alleged child abuse or neglect. Based on your representations, we agree that report numbers 0231157-V and 0231158-V are subject to section 261.201 of the Family Code. *See id.* § 261.001(1) (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). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude the department must withhold report numbers 0231157-V and 0231158-V in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses section 58.007 of the Family Code, which you raise for portions of report number 0267851-V. Section 58.007 of the Family Code 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 Subchapter B.

Fam. Code § 58.007(c). Law enforcement records relating to juvenile conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. However, section 58.007 is inapplicable when an incident does not involve a suspect or offender who is a "child" as defined by section 51.02 of the Family Code. A "child" is a person who is:

- (a) ten years of age or older and under 17 years of age; or
- (b) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

*Id.* § 51.02(2). Here, one of the suspects in report number 0267851-V is listed as nine years old at the time of the incident, one suspect is identified as an adult, and no age is listed for the remaining suspects. *See id.* § 51.03 (defining "delinquent conduct"). Thus, the report at issue does not identify a child as defined by section 51.02 of the Family Code. Therefore, because the Legislature has chosen to protect only the law enforcement records of a child who is between the ages of ten and sixteen at the time of the reported conduct, we must conclude that the portions of report number 0267851-V you seek to withhold are not confidential under section 58.007(c) of the Family Code and may not be withheld under section 552.101 of the Government Code on that basis. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

Next, you raise section 552.101 in conjunction with common-law privacy, which protects information if it (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* include 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. To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We find that the information you have marked in report number 0494176-R is highly intimate or embarrassing information that is of no legitimate public interest. Therefore, the department must withhold the marked information under section 552.101 in conjunction with common-law privacy.

Finally, you claim that the information that you have marked in report number 0267851-V is exempted from disclosure under section 552.130 of the Government Code.

Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). Accordingly, we agree that the department must withhold the Texas motor vehicle record information you have marked in report number 0267851-V under section 552.130.

In summary, the department must withhold report numbers 0231157-V and 0231158-V under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the information you have marked in report number 0494176-R under section 552.101 in conjunction with common-law privacy. The department must withhold the Texas motor vehicle record information you have marked in report number 0267851-V under section 552.130 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](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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID# 347799

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)