



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2009

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2009-13275

Dear Mr. Griffith:

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# 355739.

The Town of Flower Mound (the "town"), which you represent, received a request for all police reports, records, or calls related to a specified address during a specified period of time. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted 9-1-1 call recording is not responsive to the present request because it does not pertain to the specified address. This ruling does not address the public availability of non-responsive information, and the town is not required to release non-responsive information in response to this request. Accordingly, we will address your arguments with regard to the responsive 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 information that other statutes make confidential, 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(c). For purposes of section 58.007, "child" means a person who is ten years

of age or older and under seventeen years of age. 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 Subchapters B, D, and E.

Id. § 58.007(c). After reviewing the information related to incident report number 09-026779, we find it involves juvenile delinquent conduct that occurred after September 1, 1997. *Id.* § 51.03(a) (defining "delinquent conduct"). It does not appear any of the exceptions in section 58.007 apply; therefore, this information is confidential pursuant to section 58.007(c) of the Family Code. Accordingly, we agree the town must withhold incident report number 09-026779 from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

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

(a) [T]he 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.

Act of May 28, 2007, 80th Leg., R.S., ch. 263, § 12, 2007 Tex. Gen. Laws 421, 428, *amended by* Act of June 1, 2009, 81st Leg., R.S., S.B. 1050, § 1 (to be codified as amendment of Fam. Code § 261.201). You state portions of the submitted information relate to allegations of possible child abuse or neglect. Upon review, we find the submitted information pertaining to CFS numbers 07018703, 07018831, and 07035308 was used or developed in investigations of alleged child abuse. Accordingly, this information falls within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. 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 the town has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information pertaining to CFS numbers 07018703, 07018831, and 07035308 is confidential under section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. However, the information pertaining to CFS number 09023004 relates to a child custody issue, and incident report number 09-027108 relates to a domestic disturbance between adults. You have not demonstrated how these reports relate to a report or investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4); Gov’t Code § 552.301(e)(1)(A) (stating that a governmental body must explain how claimed exception to disclosure applies). We therefore conclude the information pertaining to CFS number 09023004 and incident report number 09-027108 is not confidential pursuant to section 261.201 of the Family Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 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.¹ *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 the information we have marked is intimate or embarrassing and not of legitimate public interest. Accordingly, the town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Next, you claim section 552.108 for portions of the remaining information. Section 552.108 provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2). Section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *Id.* § 552.108(a)(2). In this instance, you state the information regarding incident report numbers 08-19612 and 07-19425 pertains to closed criminal investigations that did not result in convictions or deferred adjudications. Based on this representation and our review, we find section 552.108(a)(2) of the Government Code is applicable to information regarding incident report numbers 08-19612 and 07-19425.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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), and includes a detailed description of the offense. Thus, with the exception of basic information, the town may withhold information pertaining to incident report numbers 08-19612 and 07-19425 under section 552.108(a)(2) of the Government Code.

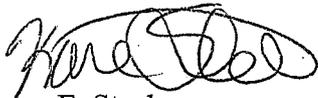
We note the remaining information contains information subject to section 552.130 of the Government Code. Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130. Upon review, we find some of the remaining submitted information contains Texas driver’s license information that is confidential under section 552.130. Accordingly, the town must withhold the Texas driver’s license information we have marked pursuant to section 552.130 of the Government Code.

In summary, the town must withhold the information related to incident report number 09-026779 pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The town must withhold information pertaining to CFS numbers 07018703, 07018831, and 07035308 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the town may withhold information pertaining to incident report numbers 08-19612 and 07-19425 under section 552.108(a)(2) of the Government Code. The town must withhold the Texas driver's license information we have marked in the remaining information pursuant to 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, 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, toll free, at (888) 672-6787.

Sincerely,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/dls

Ref: ID# 355739

Enc. Submitted documents

c: Requestor
(w/o enclosures)