



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2009

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-17603

Dear Mr. Bounds:

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# 364264.

The City of Corpus Christi (the "city") received a request for information pertaining to certain pleas taken by persons who are not judges in a named court. You state you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You also state that the city has released some of the requested information. You claim that portions of the submitted information are 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 that the submitted information appears to be records of the city's municipal court (the "court"). The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code §§ 552.003(1)(A), (B) (definition of "governmental body" under Act specifically excludes the judiciary), .021 (Act generally requires disclosure of information maintained by "governmental body"). Accordingly, to the extent the submitted information is maintained solely by the court, it is not subject to release under the Act and need not be

¹Section 552.147(b) of the Government Code authorizes a government 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.

released in response to the present request.² However, to the extent any portion of the submitted information is also maintained by the city outside of the court, it is subject to the Act and we will address your arguments against the disclosure for that information.

Next, we note that some or all of the submitted information may consist of confidential juvenile law enforcement records. Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes; such as section 58.007 of the Family Code. Section 58.007 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 Subchapters B, D, and E.

Fam. Code § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct indicating a need for supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of the Family Code). 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 id.* § 51.02(2). We note the submitted information, which pertains to criminal cases involving offenses such as minor in possession of an alcoholic beverage and violations of curfew ordinances, among others, does not reflect the ages of the offenders involved. Because we are unable to determine the ages of the offenders involved in these documents, we must rule conditionally. To the extent the submitted information constitutes records of juvenile suspects or offenders engaged in delinquent conduct or conduct indicating a need for supervision who are ten years of age or older and under seventeen years of age, they are confidential pursuant to

²As determination in this case is dispositive, we need not address your arguments against the disclosure of the submitted information to the extent it is not subject to the Act.

section 58.007(c) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code.³ However, to the extent the submitted information pertains to suspects or offenders who are not ten years of age or older and under seventeen years of age, the city may not withhold the submitted information under section 58.007. In that case, we will address your arguments against the disclosure of portions of the submitted information.

Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. See Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). The city does not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the fingerprints at issue. Therefore, the city must withhold the fingerprints you have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy and excepts from public disclosure private information about an individual if the information (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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. 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). Upon review, we conclude the information you have marked is intimate and embarrassing and of no legitimate public interest. Accordingly, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the submitted information is maintained solely by the court, it is not subject to release under the Act and need not be released in response to the present request. If the submitted information is subject to the Act, to the extent the submitted information constitutes records of juvenile suspects or offenders engaged in delinquent

³As our ruling is dispositive under this scenario, if the submitted information is confidential under section 58.007 of the Government Code, we need not address your remaining arguments against the disclosure of portions of the submitted information.

conduct or conduct indicating a need for supervision who are ten years of age or older and under seventeen years of age, they are confidential pursuant to section 58.007(c) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code. To the extent the submitted information pertains to suspects or offenders who are not ten years of age or older and under seventeen years of age, the city must withhold the fingerprints you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. In that instance, the city must also withhold the information you have marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy and must release remaining information.

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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/dls

Ref: ID# 364264

Enc. Submitted documents

c: Requestor
(w/o enclosures)