



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2010

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2010-02381

Dear Mr. Alicie:

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# 370417.

The Baytown Police Department (the "department") received two requests from different requestors for police reports listing the requestors' child as a runaway. The first requestor, the child's father, requested all runaway reports. The second requestor, the child's mother, requested the last runaway report. You state the department has released certain information to the first requestor. You state the department will redact social security numbers from the submitted information pursuant to section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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 58.007 of the Family Code, which in relevant part provides:

¹Section 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. See Gov't Code § 552.147.

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

- (1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and
- (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007, a juvenile suspect or offender is a child as defined by section 51.02 of the Family Code. *See id.* § 51.02(2) ("child" means a person who is ten years of age or older and under seventeen years of age). However, for the purposes of section 58.007(j), we conclude that a juvenile victim or witness is a person who is under eighteen years of age. The

submitted information involves allegations of juvenile conduct indicating a need for supervision that occurred after September 1, 1997. Accordingly, this information would ordinarily be confidential pursuant to section 58.007 of the Family Code. However, section 58.007(e) allows for the review or copy of juvenile law enforcement records by a child's parent or guardian. *See id.* § 58.007(e). Thus, as the parents of a juvenile offender involved in the submitted reports, the requestors have a right of access to the submitted law enforcement records they requested involving their child. Before a parent may inspect juvenile law enforcement records, any personally identifiable information concerning juvenile suspects, offenders, victims, or witnesses other than the parent's child must be redacted. *See id.* § 58.007(j)(1). You have highlighted information pertaining to a juvenile offender other than the requestors' child in report 2009-36849. We note that some of the highlighted information does not personally identify the juvenile offender; therefore, the department may not withhold this information, which we have marked for release. We agree that the department may withhold the remaining information you have marked under section 58.007(j)(1). Furthermore, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. Therefore, we will consider your other argument against disclosure.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Industrial Found. v. Texas 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 demonstrated. *See id.* at 681-82. The type of information considered intimate or 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. *See* 540 S.W.2d at 683. This office also has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under 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 agree that the information you have highlighted in yellow in reports 2008-21878, 2008-28898, 2009-19322, 2009-26428, and 2009-26599, as well as the information you have highlighted in yellow in report 2009-36849 that does not pertain to the first requestor, is confidential pursuant to common-law privacy and must be withheld from the first requestor under section 552.101 of the Government Code. The remaining information in these reports must be released to the first requestor. The department must withhold from the second requestor the information you have highlighted in yellow in report 2009-36849 that does not pertain to the second requestor under section 552.101 in conjunction with common-law privacy. The remaining information in report 2009-36849 must be released to the second requestor.

In summary, with the exception of the information we have marked for release, the department must withhold the information you have highlighted in report 2009-36849 that relates to a juvenile offender other than the requestors' child under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The department must withhold from the first requestor the information highlighted in yellow in reports 2008-21878, 2008-28898, 2009-19322, 2009-26428, and 2009-26599, as well as the information highlighted in yellow in report 2009-36849 that does not pertain to the first requestor. The remaining information in these reports must be released to the first requestor.² The department must withhold from the second requestor the information highlighted in yellow in report 2009-36849 that does not pertain to the second requestor. The remaining information in report 2009-36849 must be released to the second requestor.³

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/cc

²We note that because the first requestor has a special right of access to information pertaining to himself that is being released that would otherwise be confidential, the department must again seek a decision from this office if it receives another request for the same information from a different requestor. *See* Gov't Code § 552.023 (person has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests).

³We note that because the second requestor has a special right of access to information pertaining to herself that is being released and that would otherwise be confidential, the department must again seek a decision from this office if it receives another request for the same information from a different requestor. *See* Gov't Code § 552.023.

Ref: ID# 370417

Enc. Submitted documents

c: Requestor
(w/o enclosures)