



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2010

Ms. Kelley Messer
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79602-0060

OR2010-08399

Dear Ms. Messer:

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# 381821.

The Abilene Police Department (the "department") received a request for two specified police reports from a specialist with the Child Protective Services (the "CPS") division of the Texas Department of Family and Protective Services (the "DFPS"). You claim that the requested 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 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 of the Family Code, which provides in part as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). Upon review, we find report number 10-005185 pertains to an investigation of alleged or suspected child abuse and consists of files, reports, records, communications, and working papers used or developed in the investigation. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *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). Accordingly, we find report number 10-005185 is generally

confidential under section 261.201 of the Family Code. We note, however, the requestor in this instance is an employee of CPS and informs us that CPS is the managing conservator of the child victim in this instance. Further, the requestor is not alleged to have committed the suspected abuse or neglect. Therefore, the department may not withhold report number 10-005185 from this requestor on the basis of section 261.201(a). *Id.* § 261.201(k). However, section 261.201(1)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Accordingly, the department must withhold the identifying information of the reporting party in report number 10-005185, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3). Further, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(1)(2). Thus, because you assert the submitted information is excepted under section 552.101 in conjunction with section 58.007 of the Family Code and section 773.091 of the Health and Safety Code, we will address your arguments under these exceptions for the submitted reports.

Section 552.101 also encompasses 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. 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). 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.

...

(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.

Id. § 58.007(c), (e), (j). You assert the submitted information is confidential under section 58.007(c). Upon review, we agree report 10-005176 involves juveniles engaged in delinquent conduct and conduct indicating a need for supervision occurring after September 1, 1997; therefore, report 10-005176 is subject to section 58.007. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). As we note above, the requestor is a CPS employee. You do not inform us, and the submitted information does not reflect, whether the requestor is also the guardian of the juvenile whose information is at issue. Accordingly, we must rule conditionally. If CPS is the guardian of the juvenile whose information is at issue in report 10-005176, then CPS has a right of to inspect law enforcement records concerning the child under section 58.007(e). *See id.* § 58.007(e). However, personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses, which we have marked, must be redacted pursuant to section 58.007(j)(1) of the Family Code in that situation. *See* § 58.007(j)(1). To the extent that CPS is not the guardian of the juvenile whose information is at issue in report 10-005176, then the department must withhold report 10-005176 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. You additionally assert that report 10-005185 is protected by section 58.007. We note, however, section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Accordingly, section 58.007 does not apply to report 10-005185, and this report may not be withheld under section 552.101 of the Government Code on that basis.

We note a portion of the remaining information consists of medical records subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 552.101 of the Government Code also encompasses the MPA. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides, in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Medical records must be released upon the patient's signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. We have marked the medical records, which may only be released in accordance with the MPA.¹

We note a portion of the remaining information is protected by common-law privacy. Section 552.101 of the Government Code 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. *See 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 established. *See id.* at 681-82. The types 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. *Id.* at 683. Additionally, this office has determined that common-law privacy protects the identities of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007(c). We have marked a portion of the remaining information that is intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

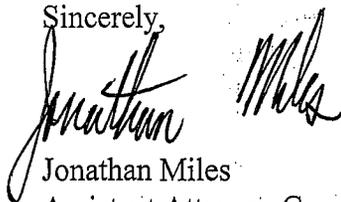
¹As our ruling is dispositive, we need not address your remaining argument for this information.

In summary, the department must withhold the identifying information of the reporting party in report number 10-005185, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3). To the extent that CPS is not the guardian of the juvenile whose information is at issue in report 10-005176, the department must withhold report 10-005176 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. To the extent that CPS is the guardian of the juvenile whose information is at issue in report 10-005176, then the department must withhold the information concerning other juveniles in that report, which we have marked, pursuant to section 58.007(j)(1) of the Family Code. The department may only release the medical records we have marked in accordance with the MPA. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 381821

Enc. Submitted documents

c: Requestor
(w/o enclosures)