



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2011

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-05146

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# 414447 (DPD Request No. 2011-0714).

The Dallas Police Department (the "department") received a request for all police reports that were coded "00000" during the first week of July and October, 2007. 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 representative sample of information.¹

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. This section encompasses section 58.007 of the Family Code. Section 58.007 provides in relevant 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:

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(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). Section 58.007 is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* §§ 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). You have marked offense reports 0678697-T and 0678848-T under section 552.101 in conjunction with section 58.007. We have reviewed these reports and find that they involve children suspected of engaging in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. You do not inform us, and it does not appear, that any of the exceptions in section 58.007 apply to the information in these reports. Therefore, offense reports 0678697-T and 0678848-T, which we marked, are confidential under section 58.007 of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code. You have also marked offense reports 0678054-T, 0681156-T, 0680704-T, 0674971-T, 0674989-T, 0681193-T, and 06776614-T under section 552.101 in conjunction with section 58.007. However, you have not explained how the children listed in these reports engaged in delinquent conduct or conduct indicating a need for supervision as defined by section 51.03 of the Family Code. *See id.* § 51.03(a), (b); *see also* Open Records Decision No 422 at 2 (1984) (attempted suicide is not a crime in Texas). Furthermore, we note reports 0681156-T, 0674971-T, 0674989-T, and 06776614-T only list the children involved as witnesses. Section 58.007(c) does not apply to law enforcement records that relate to a child only as a complainant, victim, witness, or other involved party. Thus, we find the department may not withhold offense reports 0678054-T, 0681156-T, 0680704-T, 0674971-T, 0674989-T, 0681193-T, and 06776614-T under section 552.101 in conjunction with section 58.007.

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

(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.

Fam. Code § 261.201(a). You have marked offense reports 0678265-T, 07624493-T, 0677397-T, 0677968-T, 0674987-T, 0677888-T, 0679126-T, and 0684061-T under section 552.101 in conjunction with section 261.201. You represent these reports were used or developed in the department's investigations of alleged child abuse or neglect. *See id.* §§ 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Family Code chapter 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). Based on your representations and our review, we find most of these reports are within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, the department must withhold offense reports 07624493-T, 0677968-T, 0677888-T, 0679126-T, and 0684061-T, which we marked, in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute)*. However, offense reports 0678265-T, 0674987-T, and 0677397-T do not reflect they were used or developed by the department in investigations of alleged child abuse or neglect. Furthermore, you do not provide a representation from another entity that they used these records in investigations conducted in accordance with section 261.201. *See Fam. Code § 261.201(b)-(g) (listing entities authorized to receive section 261.201 information)*. Accordingly, offense reports 0678265-T, 0674987-T, and 0677397-T may not be withheld under section 552.101 in conjunction with section 261.201.

Section 552.101 also encompasses the doctrine of 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type of information considered highly 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. This office has found 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. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps)*. In addition, this office has found that a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing

distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You raise section 552.101 in conjunction with common-law privacy for the marked portions of the remaining information. Upon review, we find that most of the information you marked, as well as the information we marked, is highly intimate or embarrassing and not of legitimate public interest. Thus, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate how the remaining information you marked is protected by privacy. Therefore, none of this information may be withheld under section 552.101 in conjunction with common-law privacy. As you raise no further exceptions for the remaining information, it must be released.

In summary, offense reports 0678697-T and 0678848-T are confidential under section 58.007 of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code. The department must withhold offense reports 07624493-T, 0677968-T, 0677888-T, 0679126-T, and 0684061-T in their entirety under section 552.101 in conjunction with section 261.201 of the Family Code. We have indicated the information the department must withhold under section 552.101 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 414447

Enc. Submitted documents

c: Requestor
(w/o enclosures)