



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 16, 2013

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

OR2013-08189

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# 487758.

The Baytown Police Department (the "department") received a request for report number 2012-49433. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which 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.

...

(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:

...

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

Fam. Code § 58.007(c), (e), (j)(2). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining "delinquent conduct" for purposes of Fam. Code § 58.007). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find the submitted information involves juvenile delinquent conduct that occurred after September 1, 1997. Therefore, the submitted information is subject to section 58.007. In this instance, the requestor is the guardian of the juvenile offender named in the submitted record. Therefore, this requestor has a right to inspect information concerning this juvenile under section 58.007(e). *Id.* § 58.007(e). Section 58.007(j)(2) of the Family Code provides, however, information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will consider your arguments under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in relevant part,

(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 [Texas 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:

...

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

*Id.* § 261.201(a), (k), (l)(2). You state the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes indecency with child under Penal Code section 21.11); *see also* Penal Code § 21.11 (defining “child” for purposes of Penal Code section 21.11 as person under 17 years of age). Accordingly, we find the submitted information is subject to section 261.201 of the Family Code. However, in this instance, the requestor is a parent of the child victim. Although you state the requestor is the individual accused of committing the alleged or suspected abuse, we note the requestor is the legal guardian of the accused, not the accused

himself. *See* Fam. Code § 261.201(k). Thus, the department may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* Section 261.201(l)(2), however, provides any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address your remaining argument against disclosure.

You also raise common-law privacy for the submitted information. Section 552.101 of the Government Code also encompasses the common-law right of 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 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 determined common-law privacy protects the identities of juvenile offenders and juvenile victims of abuse and neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code §§ 58.007(c), 261.201. However, in this instance, the requestor is the parent and legal guardian of the children whose privacy rights are implicated. Pursuant to section 552.023 of the Government Code, “[a] person or a person’s authorized representative 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.” Gov’t Code § 552.023(a)-(b). Thus, the requestor has a right of access to these children’s private information pursuant to section 552.023, and the department may not withhold this information under section 552.101 of the Government Code on the basis of common-law privacy. As no other exceptions to disclosure are raised, the department must release the submitted information to this requestor.<sup>1</sup>

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](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

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<sup>1</sup>Because the information being released in this instance includes information that may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,

A handwritten signature in black ink, consisting of several overlapping, sweeping lines that form a stylized representation of the name Ana Carolina Vieira.

Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 487758

Enc. Submitted documents

c: Requestor  
(w/o enclosures)