



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 10, 2014

Ms. Lauren F. Crawford  
Denton, Navarro, Rocha & Bernal, P.C.  
2500 West William Cannon, Suite 609  
Austin, Texas 78745

OR2014-00704

Dear Ms. Crawford:

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# 510631.

The City of Copperas Cove (the "city"), which you represent, received a request for seventeen categories of information pertaining to a named individual. We understand you will redact information subject to section 552.117(a)(2) pursuant to Open Records Decision No. 670 (2001) and section 552.130 of the Government Code and pursuant to Open Records Decision 684 (2009).<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. We have

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<sup>1</sup>Although you state you will redact certain information pursuant to section 552.1175 of the Government Code, we note the proper exception in this instance is section 552.117(a)(2) of the Government Code because the city holds the information at issue in an employment context. We further note Open Records Decision No. 670 is a previous determination that authorizes all governmental bodies to withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code, without the necessity of requesting an attorney general decision. ORD 670; *see also* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301). Section 552.130(c) of the Government Code permits a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note the requestor specifically excluded from her request home addresses, home telephone numbers, social security numbers, dates of birth, driver's license numbers, and license plate information. Therefore, those types of information are not responsive to the present request for information. Further, you inform us Exhibits D7 and D8 are not responsive to the request for information because they do not pertain to any of the categories of the request. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release such information in response to the request. Accordingly, we do not address your claimed exceptions for the non-responsive 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. This section encompasses information protected by other statutes, such as section 550.065(b) of the Transportation Code. Section 550.065(b) states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). The requestor has not provided the city with two of the three requisite pieces of information specified by the statute. Accordingly, the city must withhold the submitted ST-3 accident report forms in Exhibit D3 under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code also encompasses the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant 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.

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<sup>2</sup>We assume the "representative sample" of information 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 that those records contain substantially different types of information than that submitted to this office.

(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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. 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). Upon review, we find the information we have marked in Exhibit D2 consists of confidential medical records. Accordingly, the city must withhold the information we have marked in Exhibit D2 under section 552.101 of the Government Code in conjunction with the MPA. However, we find none of the remaining information in Exhibit D2 constitutes medical records or information obtained from medical records. Accordingly, the city may not withhold any of the remaining information at issue under section 552.101 in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses section 261.201 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). Upon review, we find Exhibit D5 and the information we have marked in Exhibit D1 were used or developed in investigations of alleged or suspected child abuse by the city's police department. Accordingly, we find this information falls within the scope of section 261.201(a) of the Family Code. *See id.* §§ 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code), 101.003(a) (defining "child" for purposes of

section 261.201 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). You do not indicate the city's police department has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we conclude Exhibit D5 and the information we have marked in Exhibit D1 are confidential under section 261.201(a) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses 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.

*Id.* § 58.007(c). Section 58.007(c) 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" for purposes of section 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 information we have marked in Exhibit D4 involves delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Further, it does not appear that any of the exceptions in section 58.007 apply to this information. Accordingly, the city must withhold the information we have marked in Exhibit D4 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, we find you have failed to demonstrate how any of the remaining information you seek to withhold under section 58.007(c) involves a juvenile engaged in delinquent conduct or conduct indicating a need for supervision as defined by the Family Code. Therefore, the remaining information may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision No. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We note the public generally has a legitimate interest in public employment and public employees, particularly those who are involved in law enforcement. *See* Open Records Decision No. 444 at 6 (1986) (public has genuine interest in information concerning law enforcement employee's qualifications and performance and circumstances of his termination or resignation); *see also* Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 473 at 3 (1987) (fact that public employee received less than perfect or even very bad evaluation not private), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108 of the Government Code provides in relevant part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See Open Records Decision Nos. 474 at 4-5 (1987), 372 (1983)*. Where an agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a different law enforcement agency, the custodian of the records may withhold the information only if it provides this office with (1) a demonstration that the information relates to the case, and (2) a representation from the entity with the law enforcement interest stating that entity wishes to withhold the information. We understand the information you have marked pertains to investigations not conducted by the city's police department. However, the city has not provided this office with any representations to indicate the agencies with the law enforcement interests wish to withhold the information at issue. Accordingly, the city has failed to demonstrate section 552.108(a)(2) or section 552.108(b)(2) of the Government Code is applicable to the information at issue, and the city may not withhold any portion of the remaining information under that exception.

In summary, the city must withhold under section 552.101 of the Government Code (1) the submitted ST-3 accident report forms in Exhibit D3 in conjunction with section 550.065(b) of the Transportation Code, (2) the information we have marked in Exhibit D2 in conjunction with the MPA, (3) Exhibit D5 and the information we have marked in Exhibit D1 under section 261.201(a) of the Family Code, (4) the information we have marked in Exhibit D4 in conjunction with section 58.007(c) of the Family Code, and (5) the information we have marked in conjunction with common-law privacy. The remaining responsive 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/tch

Ref: ID# 510631

Enc. Submitted documents

c: Requestor  
(w/o enclosures)