



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 15, 2014

Mr. Daniel Ortiz
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2014-00959

Dear Mr. Ortiz:

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# 511128.

The El Paso Police Department (the "department") received a request for all incident reports and 9-1-1 calls for a specified address during a specified time period. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ 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. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after

¹You state the department has marked information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, upon review of the submitted information, we find no such markings. Accordingly, we will not address your arguments under section 772.318 of the Health and Safety Code.

September 1, 1997 are confidential under section 58.007(c) of the Family Code. Fam. Code § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Section 58.007 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). 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). We note section 58.007(c) applies only to law enforcement records that involve a juvenile as a suspect, offender, or defendant. Upon review, we find you have failed to demonstrate the submitted information consists of law enforcement records involving juvenile delinquent conduct or conduct indicating a need for supervision for the purposes of section 58.007. Accordingly, the department may not withhold any of the submitted information under section 552.101 of the Government Code on that basis.

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

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

Id. § 261.201(a). Upon review, we find you have failed to demonstrate how any portion of the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. Therefore, the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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). Further, we find the identity of a victim of child abuse or neglect is private. *Cf.* Fam. Code § 261.201. Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated how the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

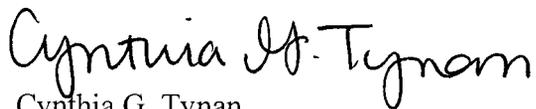
In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.

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, 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 that reads "Cynthia G. Tynan". The signature is written in a cursive style with a large initial "C".

Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 511128

Enc. Submitted documents

c: Requestor
(w/o enclosures)