



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2014

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2014-03701

Dear Ms. Pemberton:

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# 515553 (Killeen ID #W012183).

The Killeen Police Department (the "department") received a request for all calls for service and police reports relating to three specified addresses from January 1, 2010, to the date of the request. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 information protected by other statutes, such as 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(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* Fam. Code § 51.02(2). The relevant language of section 58.007 reads 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:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j)(2). We note report number 13-005830 involves a juvenile runaway. Thus, this information involves a juvenile engaged in conduct indicating a need for supervision that occurred after September 1, 1997, and is subject to section 58.007. *See id.* § 51.03(b) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). Therefore, report number 13-005830 is within the scope of section 58.007(c). However, the requestor is the step-parent of the juvenile suspect listed in the report and may have a right of access to information otherwise made confidential by section 58.007(c). *See id.* § 58.007(e) (law enforcement records may be inspected by child's parent or guardian). As we are unable to determine whether the requestor is a parent or guardian of the juvenile suspect, we must rule conditionally. If the department determines the requestor is not a parent or guardian of the juvenile suspect, the department must withhold report number 13-005830 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the

Family Code. If the department determines the requestor is a parent or guardian of the juvenile suspect, the department may not withhold report number 13-005830 from the requestor on the basis of section 58.007(c) of the Family Code. However, section 58.007(j)(2) provides before a parent or guardian of a juvenile suspect may inspect the information, the department must withhold information that is excepted from required disclosure under the Act or other law. *See id.* § 58.007(j)(2). Accordingly, we will address your remaining arguments against disclosure of this information, as well as the remaining information.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides, in pertinent 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 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.

Fam. Code § 261.201(a), (k). Upon review, we agree call for service number 1051905 and police report number 10-006036 were used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. Furthermore, we find the additional information we have marked was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. Thus, this information falls within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for

purposes of section 261.201 of Family Code). In this instance, although the requestor is a step-parent of one of the child victims of the alleged or suspected abuse or neglect, the requestor is the individual accused of committing the suspected abuse or neglect against that child. Thus, the requestor does not have a right of access to the information at issue under section 261.201(k). *See id.* § 261.201(k). We therefore conclude call for service number 1051905, police report number 10-006036, and the additional information we have marked are confidential under section 261.201(a). Accordingly, this information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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[.]” Gov’t Code §552.108(a)(2). You state the department has concluded its investigations related to the remaining information. You state the department does not anticipate filing any charges based on any of these cases in the future, and these cases did not result in convictions or deferred adjudications. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to the remaining information, including report number 13-005830 should you find the requestor has a right of access to this report under section 58.007(e) of the Family Code.

We note basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of basic information, the department may withhold the remaining information, including report number 13-005830 should you find the requestor has a right of access to this report under section 58.007(e) of the Family Code, under section 552.108(a)(2) of the Government Code.²

We understand you to claim the basic information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Types of information considered intimate and embarrassing by the Texas

¹Because our ruling is dispositive as to this information, we need not address your remaining arguments against its disclosure.

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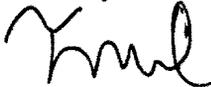
Supreme Court are delineated in *Industrial Foundation. Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Upon review, we find some of the basic information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the department has failed to demonstrate any of the remaining basic information is highly intimate or embarrassing and a matter of no legitimate public interest. Therefore, no portion of the remaining basic information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, if the department determines the requestor is not a parent or guardian of the juvenile suspect, the department must withhold report number 13-005830 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold call for service number 1051905 and police report number 10-006036 in their entirety, as well as the additional information we have marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the department may withhold the remaining information, including report number 13-005830 should you find the requestor has a right of access to this report under section 58.007(e) of the Family Code, under section 552.108(a)(2) of the Government Code. In releasing the basic information, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 515553

Enc. Submitted documents

c: Requestor
(w/o enclosures)