



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 7, 2014

Ms. Donna L. Johnson
Counsel for the City of Stafford
Olsen & Olsen LLP
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2014-04013

Dear Ms. Johnson:

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# 515957 (Ref No. COS13-039a).

The City of Stafford (the "city"), which you represent, received a request for all information pertaining to a case involving two named individuals. You inform us you will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code.¹ 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 261.201 of the Family Code, which provides in relevant part:

¹Section 552.130(c) of the Government Code allows 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). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b).

(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[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find the submitted information was used or developed in an investigation by the city's police department of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261). In this instance, however, the requestor is the authorized representative of the parent of the child victim named in the report. Further, this parent is not the individual alleged to have committed the alleged abuse or neglect. *See id.* § 261.201(k). Accordingly, the city may not withhold the submitted information from the requestor under section 261.201(a). *Id.* However, section 261.201(l)(2) states that any information excepted from required disclosure under the Act or other law may still be withheld from disclosure.

Id. § 261.201(1)(2). Thus, we will consider your remaining arguments under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code. *Id.* § 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). A “child” for purposes of section 58.007(c) is defined as a person who is ten years of age or older and younger than seventeen years of age when the conduct occurred. *Id.* § 51.02(2). Upon review, we find the submitted report involves conduct by a child who is seven years old. Because the legislature has chosen to protect only the law enforcement records of a child who is between the ages of ten and sixteen at the time of the reported conduct, we find the submitted information is not confidential under section 58.007(c). *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection). Accordingly, the city may not withhold the submitted information 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). 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, while some of the remaining information would ordinarily be protected by common-law privacy, the requestor is the authorized representative of the individual whose privacy interests are at issue. Accordingly, the requestor has a special right of access under section 552.023 of the Government Code to the information. See Gov't Code § 552.023 (person's authorized representative has special right of access to information excepted from public disclosure under laws intended to protect person's privacy interest as subject of information); see also Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Additionally, we find the remaining information is not highly intimate or embarrassing and of no legitimate public interest. Therefore, none of the remaining information may be withheld from this requestor under section 552.101 in conjunction with common-law privacy. Thus, as you raise no further exceptions to disclosure, the remaining information must be released.²

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,

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

²We note this requestor has a special right of access under section 261.201(k) of the Family Code to the information being released. Therefore, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

Ref: ID# 515957

Enc. Submitted documents

c: Requestor
(w/o enclosures)