



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2014

Ms. Regina Edwards
First Assistant City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2014-18210

Dear Ms. Edwards:

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# 538900 (City ID No. 3174).

The City of Carrollton (the "city") received a request for information pertaining to five named individuals. You state you will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code.¹ 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 section 261.201 of the Family Code, which provides, in relevant 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:

¹We note the city did not comply with section 552.301 of the Government Code in requesting this decision. See Gov't Code § 552.301(b). Nonetheless, because the sections you claim can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. See *id.* §§ 552.007, .302, .352.

(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.

Fam. Code § 261.201(a), (k). You state, and we agree Exhibits B, C, and D were used or developed in investigations of alleged or suspected child abuse or neglect. Upon review, we find the information at issue is within the scope of section 261.201 of the Family Code. See *id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201), 101.003(a) (defining “child” as a person under eighteen years of age who is not and has not been married and 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 that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we find the information at issue is confidential pursuant to section 261.201(a) of the Family Code. While the requestor has received and provided to this office a signed authorization for releasing the information from the parents of the child victims in the information at issue, one of the parents was suspected of committing the alleged or suspected abuse or neglect in the information at issue. Therefore, we determine the requestor does not have a right of access to the information at issue under section 261.201(k). See *id.* § 261.201(k).

Section 261.201 provides, however, that information encompassed by section 261.201(a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1285(a) of the Government Code provides in part that “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety (the “DPS”)] criminal history record

information that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code.” Gov’t Code § 411.1285(a); *see* Fam. Code ch. 203 (governing administration of domestic relations offices). Additionally, section 411.087 of the Government Code provides, in part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [DPS] criminal history record information maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Gov’t Code § 411.087(a)(2). “Criminal history record information” means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Thus, a domestic relations office may only receive criminal history record information if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See id.* § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information).

The requestor states she has been appointed by the Dallas County Family District Courts to complete a court-ordered social study involving the individuals named in the request. *See* Fam. Code § 107.051(b) (court ordered social study may be performed by domestic relations office). Therefore, if the city determines Exhibits B, C, and D are related to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code and release of the information is consistent with the Family Code, then the city must make available to the requestor information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions and withhold the remaining information in Exhibits B, C, and D under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. If the city determines either the information at issue is not related to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or disclosure of the information at issue is not consistent with the Family Code, the city must withhold Exhibits B, C, and D in their entireties under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. *See id.* § 261.201(b)-(g), (k), (l) (listing entities authorized to receive section 261.201 information); *see also* Open Records

Decision No. 440 at 2 (1986); Attorney General Opinions DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986).

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides, in 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.

Fam. Code § 58.007(c); *see id.* § 51.03(a) (defining "delinquent conduct" for purposes of title 3 of Family Code). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining "child" for purposes of title 3 of Family Code). We find Exhibit F involves a juvenile offender, so as to fall within the scope of section 58.007(c). It does not appear that any of the exceptions in section 58.007 apply; therefore, the city must withhold Exhibit F under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.²

²As noted above, the requestor in this instance states she was appointed by the Dallas County Family District Courts to perform a social study of the family of the individuals named in the request. We note a domestic relations office created under chapter 203 of the Family Code is entitled to obtain from the Department of Public Safety criminal history record information that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203. *See Gov't Code* § 411.1285(a); Fam. Code § 203.001(2) (defining "domestic relations office"). As the information subject to section 58.007(c) of the Family Code does not contain any criminal history record information that relates to any person who is the subject of the social study, we need not determine the applicability of section 411.1285 to this portion of the request.

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. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Additionally, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally private. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Upon review, we conclude some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the requestor provided an authorization to release information signed by the individual whose information is at issue. Section 552.023 of the Government Code states a person or that person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. *See* Gov't Code § 552.023(a); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Accordingly, the information at issue may not be withheld on the basis of section 552.101 in conjunction with common-law privacy. Further, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). We note section 552.136 also protects privacy interests. As noted above, the requestor is an authorized representative of the individual to which the information at issue pertains. Accordingly, the requestor has a right of access to this information pursuant to section 552.023 of the Government Code. *See generally id.* § 552.023; *see* ORD 481 at 4. Further, we find you have not explained how any of the remaining information at issue consists of a credit card, debit card, or charge card number, or is an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See* Gov't Code §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, we find you have failed to demonstrate the applicability of section 552.136 of the Government Code to the remaining information. Thus, the city may not withhold the information at issue under section 552.136 of the Government Code.

In summary, the city must withhold Exhibits B, C, and D under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; however, if the city determines this information is related to a person who is a party to a proceeding in which the requestor is providing services permitted under chapter 203 of the Family Code and release of the information is consistent with chapter 261 of the Family Code, the city must release from the information at issue that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. The city must withhold Exhibit F under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The city must release the remaining information.³

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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 538900

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³The requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(a). Accordingly, if the city receives another request for this same information from another requestor, it must again seek a ruling from this office.