



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 9, 2014

Ms. Amanda Pell  
Open Records Specialist  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2014-22235

Dear Ms. Pell:

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# 546033 (PIR# 3335).

The Baytown Police Department (the "department") received a request for information pertaining to a specified incident. You state the department will redact social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the present request for information because it was created after this request was received by the department. This ruling does not address the public availability of the non-responsive information we have marked, and the department need not release it in response to this request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

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<sup>1</sup>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. Gov't Code § 552.147(b).

Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in pertinent part:

(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.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

Fam. Code § 261.201(a), (h). Upon review, we find the responsive information was used or developed in an investigation of alleged or suspected child abuse or neglect. *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). In this instance, however, the information at issue is related to an investigation of alleged or suspected child abuse or neglect that occurred in a residential facility. Section 261.201 does not apply to an investigation of alleged or suspected child abuse or neglect in a home or facility regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code. *Id.* § 261.201(h). We are unable to determine if the residential facility at issue is regulated under chapter 42. Thus, we must rule conditionally. If the residential facility is not regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code, the department must withhold the responsive information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup> However, if the residential facility at issue is regulated under chapter 42 of the Human Resources Code, section 261.201(a) of the Family Code is not applicable to the responsive information, and the department may not withhold the responsive information under section 552.101 of the Government Code on that basis. In that instance, we will address your argument against disclosure of the responsive information.

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<sup>2</sup>In this instance, our ruling is dispositive and we need not address your remaining argument against disclosure.

You seek to withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. Section 552.101 also encompasses section 58.007 of the Family Code, which provides in pertinent 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.

...

(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:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child[.]

*Id.* § 58.007(c), (e), (j)(1). Section 58.007(c) is applicable to law enforcement 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).

Section 58.007(e) allows for access to juvenile law enforcement records subject to section 58.007(c) by a child's parent or guardian. *Id.* § 58.007(e). However, any personally identifiable information concerning another juvenile suspect, offender, victim, or witness must be redacted from documents subject to release under section 58.007(e). *Id.* § 58.007(j)(1). We note section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant for purposes of section 58.007. *See id.* § 58.007(c). Upon review, we find the responsive information does not depict a juvenile as a suspect, offender, or defendant. Therefore, we find you have failed to demonstrate the applicability of section 58.007(c) to the information you have marked. Because section 58.007(c) is not applicable to the information, you may not withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.

Section 552.101 also encompasses common-law privacy. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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. We note common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *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*. Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the residential facility at issue in the responsive information is not regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code, the department must withhold the responsive information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent the residential facility at issue is regulated under chapter 42 of the Human Resources Code, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, and release the remaining responsive 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](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,



Alley Latham  
Assistant Attorney General  
Open Records Division

AKL/dls

Ref: ID# 546033

Enc. Submitted documents

c: Requestor  
(w/o enclosures)