



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 10, 2015

Ms. Judith N. Benton  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2015-04539

Dear Ms. Benton:

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# 556540 (City of Waco Reference # LGL-14-333).

The City of Waco (the "city") received a request for all information pertaining to specified police reports. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> 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 other statutes make confidential, 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(c). Section 58.007 provides, in pertinent part, 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,

---

<sup>1</sup>Although you do not raise sections 552.130 of the Government Code in your brief, we understand you to claim this exception based on your markings in the submitted information.

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). 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 when the conduct occurred. *See id.* § 51.02(2). Upon review, we conclude Exhibit 3 consists of law enforcement records involving juvenile delinquent conduct or conduct indicating a need for supervision occurring after September 1, 1997, and is, therefore, subject to section 58.007(c). *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). None of the exceptions in section 58.007 apply. Therefore, Exhibit 3 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

Section 552.101 also encompasses information made confidential by 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:

- (1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

*Id.* § 261.201(a), (k), (l)(1)-(2). Exhibit 4 consists of information used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. Accordingly, Exhibit 4 falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for the purposes of this section as a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). In this instance, the requestor is one of the child victims depicted in Exhibit 4, and the requestor is now an adult. Thus, pursuant to section 261.201(k), the department may not withhold the entirety of Exhibit 4 from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* § 261.201(k).

Subsection 261.201(l)(1), however, states the personally identifiable information of a victim or witness who is under the age of eighteen and is not a child of the parent, managing conservator, or other legal representative requesting the information must be withheld from disclosure. *Id.* § 261.201(l)(1). Thus, the city must withhold the information we have marked in Exhibit 4 under section 552.101 of the Government Code in conjunction with

section 261.201(1)(1). Further, section 261.201(1)(2) states a governmental body must redact any information that is excepted from required disclosure under the Act or other law. *See id.* § 261.201(1)(2). Accordingly, we will consider whether the remaining information in Exhibit 4 is excepted under the Act.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy protects information about an individual 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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find some of the remaining information 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.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the city must withhold the motor vehicle record information it has marked and we have marked under section 552.130 of the Government Code.

In summary, the city must withhold: (1) Exhibit 3 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, (2) the identifying information of child victims and witnesses we have marked in Exhibit 4 under section 552.101 of the Government Code in conjunction with 261.201(1)(1) of the Family Code, (3) the criminal history information marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) the information you have marked and we have marked under section 552.130 of the Government Code. The city must release the remaining submitted information under section 261.201(k) of the Family Code.<sup>2</sup>

---

<sup>2</sup>We note the requestor has a special right of access to information being released pursuant to section 261.201(k) of the Family Code. *See* Fam. Code § 261.201(k).

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,



Katelyn Blackburn-Rader  
Assistant Attorney General  
Open Records Division

KB-R/akg

Ref: ID# 556540

Enc. Submitted documents

c: Requestor  
(w/o enclosures)