



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 28, 2015

Ms. Sarah R. Martin
Assistant Police Legal Advisor
Legal Division
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR2015-08096

Dear Ms. Martin:

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# 561557 (Ref. No. 19403).

The Arlington Police Department (the "department") received a request for all calls and reports pertaining to a named individual and all calls and reports pertaining to the requestor. 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 public 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 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. Fam. Code § 58.007(c). 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.

Id. 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). Upon review, we find incident report numbers 99-9013395, 00-49723, and 01-40058 involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). Thus, this information is subject to section 58.007(c). In this instance, it does not appear any of the exceptions to confidentiality under section 58.007 apply. Accordingly, the department must withhold incident report numbers 99-9013395, 00-49723, and 01-40058 in their entireties under section 552.101 in conjunction with section 58.007(c) of the Family Code. However, we find you have failed to demonstrate the remaining information at issue identifies an individual who is ten years of age or older and under the age of seventeen as a suspect or offender of delinquent conduct or conduct indicating a need for supervision. *See id.* Therefore, the department may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

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

...

(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.

Id. § 261.201(a), (k), (l)(2). Upon review, we find incident report numbers 97-3170208, 00-47827, and 14-26784 were used or developed in investigations of alleged or suspected abuse under chapter 261 of the Family Code. Accordingly, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for 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). You do not indicate the 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 conclude incident report number 00-47827 is confidential pursuant to section 261.201 of the Family Code. Accordingly, the department must withhold incident report number 00-47827 under section 552.101 in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we note the requestor is the child victim listed in incident report number 97-3170208, and is now at least eighteen years old. We further note the requestor is the parent of the child victim listed in incident report number 14-26784, and the requestor is not alleged to have committed the abuse. Thus, pursuant to section 261.201(k), the department may not withhold incident report numbers 97-3170208 or 14-26784 from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(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(l)(2). Accordingly, we will consider whether the remaining information is otherwise excepted under the Act.

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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, although you seek to withhold the information in Exhibit C in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Upon review, we find the information at issue is not highly intimate or embarrassing information or is of legitimate public interest. Therefore, none of the information in Exhibit C may be withheld 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 license, 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.¹ *See* Gov't Code § 552.130(a). Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold incident report numbers 99-9013395, 00-49723, and 01-40058 under section 552.101 in conjunction with section 58.007(c) of the Family Code. The department must withhold incident report number 00-47827 under section 552.101 in conjunction with section 261.201 of the Family Code. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must release the remaining information.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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note the requestor has a special right of access to some of the information being released in this instance. *See* Fam. Code § 261.201(k); Gov't Code § 552.023(a). If the department receives another request for this information from a different requestor, it must again seek a ruling from this office.

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,

A handwritten signature in black ink, appearing to read 'Kenny Moreland', written in a cursive style.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 561557

Enc. Submitted documents

c: Requestor
(w/o enclosures)