



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 29, 2015

Ms. Cynthia Trevino
Counsel for the City of Pflugerville
Denton, Navarro, Rocha, Bernal, Hyde & Zech, P.C.
2500 West William Cannon Drive, Suite 609
Austin, Texas 78745

OR2015-10563

Dear Ms. Trevino:

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# 565238.

The Pflugerville Police Department (the "department"), which you represent, received a request for copies of a specified internal investigation, information related to specified court case involving a named individual, and a specified investigation involving the requestor's son. The department states it will redact information pursuant to sections 552.130 and 552.147 of the Government Code, and under section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We note the information we have indicated is not responsive to the instant request for information because it does not relate to the specified internal investigation, information

¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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. *See id.* § 552.147(b). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

related to a specified court case involving a named individual, and a specified investigation involving the requestor's son. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information 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." *Id.* § 552.101. Section 552.101 encompasses information that other statutes make confidential, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 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, 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:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j)(2). 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 report number 10080066 consists of law enforcement records of a juvenile engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Therefore, report number 10080066 is confidential under section 58.007(c) of the Family Code. However, the requestor is a parent of the juvenile offender listed in the report. Therefore, the requestor has a right to inspect law enforcement records concerning his child under section 58.007(e). *See id.* § 58.007(e). Section 58.007(j)(2) provides, however, that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.007(j)(2). Accordingly, we will consider whether report number 10080066 is otherwise excepted from disclosure under the Act.

Section 552.101 of the Government Code encompasses information protected by other statutes, such as 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 [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.

Id. § 261.201(a). The department contends the submitted information is confidential under section 261.201. Upon review, we find report number 10080066 consists of an investigation of alleged or suspect abuse or neglect of a child made under section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 as 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), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Therefore, we determine report number 10080066 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold report number 10080066 under section 552.101 of the Government Code in

conjunction with section 261.201 of the Family Code.² However, we note the remaining information consists of an administrative investigation by the department of a police officer, which is not an investigation for purposes of 261.201 of the Family Code. Therefore, we find you have failed to demonstrate how the remaining information at issue consists of a report of alleged or suspect abuse or neglect of a child under section 261.201 of the Family Code, or how the information was used or developed in an investigation of alleged or suspected child abuse or neglect of a child under section 261.201 of the Family Code. Thus, the remaining information at issue may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you have marked pertains to a criminal case that concluded in a result other than conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to the information you have marked.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold the information it has marked under section 552.108(a)(2).

Section 552.101 of the Government of the 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 also found common-law privacy generally protects the identifying information of child victims of abuse or neglect. *See* Open Records Decision

²As our ruling is dispositive of this information, we need not address your remaining argument against disclosure.

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*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold report number 10080066 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the basic information, which must be released, the department may withhold the information it has marked under section 552.108(a)(2) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining responsive 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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

³We also note the requestor has a right of access beyond that of the general public to some of the information being released that pertains to himself. *See* Gov't Code § 552.023(a). Accordingly, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.

Ref: ID# 565238

Enc. Submitted documents

c: Requestor
(w/o enclosures)