



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2015

Mr. Maxwell Branham
Assistant City Attorney
Office of the City Attorney
City of San Angelo
72 West College Avenue
San Angelo, Texas 76903

OR2015-12851

Dear Mr. Branham:

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# 568986.

The City of San Angelo (the "city") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 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. This section encompasses information protected by other statutes such as section 58.007 of the Family Code, which provides, in pertinent part, as follows:

¹Although you do not raise section 552.130 of the Government Code in your brief, we understand you to assert this exception based on your markings. Additionally, we note you failed to comply with the procedural requirements of section 552.301(b) of the Government Code in requesting a decision from this office. See Gov't Code § 552.301(b) (requiring governmental body to ask for ruling and state exceptions that apply within ten business days of receiving written request). Nonetheless, sections 552.101 and 552.130 of the Government Code are mandatory exceptions that can provide compelling reasons to overcome the presumption of openness caused by failure to comply with section 552.301. See *id.* §§ 552.007, .302. Thus, we will address the applicability of these exceptions to the submitted information.

(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). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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 conduct at issue. *See id.* § 51.02(2). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Upon review, we find the submitted information does not identify a juvenile suspect or offender for the purposes of section 58.007(c). Accordingly, we find the city has not demonstrated the applicability of section 58.007(c) to this information; thus, the city may not withhold any of the submitted information under section 552.101 on this basis.

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

(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). We note the submitted information may pertain to an investigation by the city's police department of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for purposes of this section 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) (defining "abuse" for purposes of chapter 261 of the Family Code). However, we are unable to determine the age of the victim at issue because the report lists two different dates of birth for the victim; thus, we rule conditionally. If the victim listed in the submitted report was under eighteen years of age and was not married or had not had the disabilities of minority removed for general purposes at the time of the incident at issue, the city must withhold the submitted information in its entirety under section 552.101 in conjunction with section 261.201(a). If, however, the victim listed in the submitted report was eighteen years of age, was or had been married, or had the disabilities of a minor removed for general purposes at the time of the incident at issue, the city may not withhold the submitted information under section 552.101 in conjunction with section 261.201. In that event, we address your remaining argument against disclosure.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We note the requestor has a right of access to his own driver's license number under section 552.023 of the Government Code. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Upon review, we conclude the city must withhold the driver's license numbers you have marked and the additional information we have marked under section 552.130 of the Government Code.

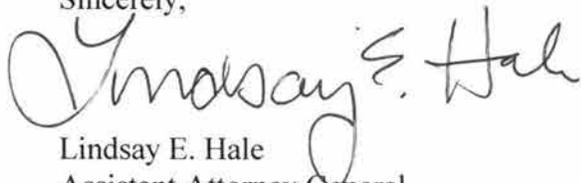
In summary, if the victim listed in the submitted report was under eighteen years of age and was not married or had not had the disabilities of minority removed for general purposes at the time of the incident at issue, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the victim listed in the submitted report was eighteen years of age, was or had been married, or had the disabilities of a minor removed for general purposes at the time of the incident at issue, the city must withhold the driver's license numbers you have marked and the additional information we have marked under section 552.130 of the Government Code and must release the remaining information.²

²We note the remaining information contains social security numbers. 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).

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/bf

Ref: ID# 568986

Enc. Submitted documents

c: Requestor
(w/o enclosures)