



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 27, 2015

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

OR2015-15174

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# 573011.

The San Angelo Police Department (the "department") received a request for all calls for service made during a specified time period regarding a specified address. You state the department is releasing some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 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 public 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 576.005 of the Health and Safety Code, which provides, "[r]ecords of a mental health facility that directly or indirectly identify a present, former, or

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<sup>1</sup>Although you do not raise section 552.130 in your brief, we understand you to raise this section based on your markings in the submitted information. We note that although you also raise section 552.101 of the Government Code in conjunction with section 552.108 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

proposed patient are confidential unless disclosure is permitted by other state law.” Health & Safety Code § 576.005. You contend the information in Exhibits C and D is confidential because it relates to children at a mental health facility. However, we note the information at issue consists of law enforcement records of the department. Accordingly, the department has failed to demonstrate section 576.005 applies to the information at issue. Therefore, the department may not withhold Exhibits C and D under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code.

Section 552.101 of the Government Code encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). The relevant portion of section 58.007 provides:

(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.* § 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 at the time of the reported conduct. *See id.* § 51.02(2). Thus, under section 58.007, law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997 are confidential. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). Upon review, we find the information we have marked involves juveniles engaged in delinquent conduct on or after September 1, 1997. It does not appear any of the exceptions in section 58.007 apply to these reports. Thus, the information we have marked is confidential and the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Additionally, we are unable to determine the ages of the suspects in report numbers 2014066032, 2014065535, and 2012009379. It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Thus, to the extent

any of the suspects listed in report numbers 2014066032, 2014065535, and 2012009379 were ten years of age or older and under seventeen years of age at the time of the incidents in question, then these reports are confidential under section 58.007(c) of the Family Code, and the department must withhold these reports under section 552.101 of the Government Code. However, to the extent none of the suspects listed in the reports at issue were ten years of age or older and under seventeen years of age at the time of the incidents in question, then report numbers 2014066032, 2014065535, and 2012009379 are not confidential under section 58.007(c) of the Family Code and the department may not withhold these reports under section 552.101 of the Government Code on that basis. In that instance, we will consider whether report numbers 2014066032, 2014065535, and 2012009379 are otherwise excepted under the Act. Further, we find you have failed to demonstrate the applicability of section 58.007 to any portion of the remaining information; thus, none of the remaining information may be withheld under section 552.101 in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under chapter 552, Government Code, 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.

*Id.* § 261.201(a). Upon review, we find the information we have marked was used or developed in investigations under chapter 261. *See id.* § 261.001 (1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also 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). Therefore, the information at issue is within the scope of section 261.201. You do not indicate the department has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we conclude the information we have marked is confidential under section 261.201(a) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

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. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.

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 has 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 in Exhibit B pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on your representation, we find the department may withhold the information you have marked in Exhibit B under section 552.108(a)(2) of the Government Code.

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 a personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. Upon review, we find the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Accordingly, the department must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; however, the department must only withhold report numbers 2014066032, 2014065535, and 2012009379 if any of the suspects listed in these reports were ten years of age or older and under seventeen years of age at the time of the incidents in question. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and common-law privacy. The department may withhold the information you have marked in Exhibit B under section 552.108(a)(2) of the Government Code. The department must withhold the information you have marked under section 552.130 of the Government Code. The department must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The remaining information must be released.

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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/bhf

Ref: ID# 573011

Enc. Submitted documents

c: Requestor  
(w/o enclosures)