



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 3, 2016

Ms. Katheryne Ellison
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2016-10011

Dear Ms. Ellison:

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# 608041 (File No. KRIV021216).

The Houston Independent School District (the "district") received a request for all information pertaining to specified incidents during a specified period of time. You claim the requested 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.¹

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. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which 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,

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 at the time of the reported conduct. *See id.* § 51.02(2). We note section 58.007(c) does not apply to law enforcement records that relate to a juvenile involved only as a complainant, victim, witness, or other involved party; rather, the juvenile must be involved as a suspect, offender, or defendant. The district asserts the incidents listed in the submitted information involve 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” for purposes of Fam. Code § 58.007). However, we are unable to determine the ages of the suspects, offenders, or defendants involved in the listed incidents. Thus, we must rule conditionally. Accordingly, to the extent the listed incidents involve suspects, offenders, or defendants who were ten years of age or older and under seventeen years of age at the time of the incidents at issue, then, as it does not appear any of the exceptions in section 58.007 apply, the district must withhold such information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, to the extent the listed incidents do not involve suspects, offenders, or defendants who were ten years of age or older and under seventeen years of age at the time of the incidents at issue, then such information is not confidential pursuant to section 58.007(c) of the Family Code and the district may not withhold that information under section 552.101 of the Government Code on that basis. In that instance, we will consider the applicability of other exceptions to disclosure of such information.

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

- (a) [T]he 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). Some of the information at issue may relate to investigations of alleged or suspected child abuse or neglect conducted by the district's police department (the "department"). *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), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, we note the department is such an agency. You do not indicate the department has adopted a rule that governs the release of this type of information. As we are unable to determine the ages of the victims involved in the listed incidents at issue, we must rule in the alternative. To the extent the information at issue relates to investigations of alleged or suspected abuse or neglect in which the victim was under 18 years of age at the time of the incident, the district must withhold such information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, to the extent the information at issue relates to investigations in which the victim was 18 years of age or older at the time of the incident, the district may not withhold such information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

552.101 of the Government Code 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. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also* *Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). In this instance, we are unable to determine the ages of the victims in the information at issue. Therefore, to the extent any of the remaining information contains the identifying information of a sexual assault victim who was 18 years of age or older, the district must

withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is intimate or embarrassing and of no legitimate public interest. Therefore, the district may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the listed incidents involve suspects, offenders, or defendants who were ten years of age or older and under seventeen years of age at the time of the incidents at issue, then, as it does not appear any of the exceptions in section 58.007 apply, the district must withhold such information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. To the extent the information at issue relates to investigations of alleged or suspected abuse or neglect in which the victim was under 18 years of age at the time of the incident, the district must withhold such information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. To the extent any of the remaining information contains the identifying information of a sexual assault victim who was 18 years of age or older, the district must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The district must release the remaining information.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 608041

Enc. Submitted documents

c: Requestor
(w/o enclosures)