



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 2, 2016

Ms. Josi Diaz
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2016-26785

Dear Ms. Diaz:

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# 636180 (ORR# 2016-19395).

The Dallas Police Department (the "department") received a request for the date reported, date of offense, offense number, original UCR code, updated UCR code, current UCR offense description, offense class, and offense type of all offense and incident reports related to incidents occurring during a specified time period. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor only seeks certain categories of information. You have submitted information beyond this information. Thus, some of the information you have submitted is not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to this request.

Next, we must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state

the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, you state the department received the request for information on August 24, 2016. Accordingly, the department's ten and fifteen-business-day deadlines were September 8, 2016, and September 15, 2016, respectively. However, you submitted the written request for a ruling and the required information in an envelope postmarked September 23, 2016. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the department failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* ORD 630. You assert the submitted information is subject to section 552.101 of the Government Code. Because section 552.101 makes information confidential and can provide a compelling reason for non-disclosure, we will address the department's arguments under this exception.

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 section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are subject to section 58.007 of the Family Code, which provides, in relevant part:

(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). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). 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). Your state portions of the information involve allegations of delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. However, we are unable to determine the ages of the alleged offenders. Accordingly, we must rule conditionally. To the extent the incidents at issue involve offenders who were ten years of age or older and under seventeen years of age at the time of the conduct at issue, such information is confidential under section 58.007(c), and the department must withhold it under section 552.101.¹ However, to the extent the offenders at issue were not ten years of age or older and under seventeen years of age at the time of the conduct at issue, the incidents at issue are not confidential pursuant to section 58.007(c) and the department may not withhold such information under section 552.101 on that basis.

Section 552.101 also encompasses information protected by 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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(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). You state some of the remaining information pertains to reports of child abuse or neglect investigations of 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). You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. We note we are unable to determine the age of the victims in the information at issue. Thus, we must rule conditionally. If the information at issue pertains to incidents involving a victim of alleged or suspected abuse or neglect who was under the age of eighteen at the time of the incident at issue, then the information is subject to section 261.201 of the Family Code. In that case, the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If, however, the victims in the information at issue were eighteen years of age or older at the time of the incidents, we find you have failed to demonstrate the applicability of section 261.201 to the information. In that instance, we conclude the department may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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. 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 the identities of victims of sexual assault or other sex-related offenses may be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review, we find the remaining information does not identify any individual. Thus, the remaining information is not highly intimate or embarrassing information of an identifiable individual. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the incidents at issue pertain to offenders who were ten years of age or older and under seventeen years of age at the time of the conduct at issue, such information is confidential under section 58.007(c) and the department must withhold it under section 552.101 of the Government Code. To the extent the information at issue

pertains to incidents involving a victim of alleged or suspected child abuse or neglect who was a under the age of eighteen at the time of the incident at issue, the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department 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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 636180

Enc. Submitted documents

c: Requestor
(w/o enclosures)