



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 13, 2019

Ms. Alicia K. Kreh
Counsel for City of Southlake
Taylor, Olson, Adkins, Sralla & Elam, Llp
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2019-12736

Dear Ms. Kreh:

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# 765213.

The City of Southlake (the "city"), which you represent, received a request for information pertaining to a named individual. You claim the submitted 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.

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. Section 552.101 encompasses section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the 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 Subsection (c) or Subchapter B, D, or E.

...

(d) Law enforcement records concerning a child may be inspected or copied by:

...

(3) the child[.]

(e) Before a child or a child's parent or guardian may inspect or copy a record concerning the child under Subsection (d), the custodian of the record shall redact:

...

(2) any information that is excepted from required disclosure under [the Act] or any other law.

Fam. Code § 58.008(b), (d)(3), (e)(2); *see id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22, 2017 Tex. Sess. Law Serv. 3173, 3187. The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find the submitted information involve a juvenile offender, so as to fall within the scope of section 58.008(b). Thus, the submitted information is generally confidential under section 58.008(b) of the Family Code. However, the requestor is a recruiter for the United States Army (the “Army”), and he has provided a signed consent from the juvenile suspect, who is now an adult. Therefore, the requestor has

a right of access to the submitted information under section 58.008(d)(3), and the city may not withhold it from him under section 552.101 in conjunction with section 58.008(b). *See id.* § 58.008(d)(3). However, section 58.008(e)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.008(e)(2). Accordingly, we will address your argument against disclosure.

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 or 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).

However, we note the requestor has a right of access to information pertaining to the named individual that would otherwise be confidential under common-law privacy as the named individual's authorized representative. *See* Gov't Code § 552.023(a) ("a person or person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to a person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, the city may not withhold the information you have marked under section 552.101 on the basis of common-law privacy. As no further exceptions to disclosure have been raised, the city must release the submitted information to this requestor.¹

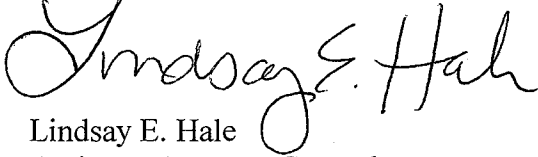
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹Because the requestor has a special right of access to the information being released, if the city receives another request for this information from an individual other than this requestor or the individual for whom he is acting as an authorized representative, the city must again seek a ruling from this office. *See* Fam. Code § 58.008(d)(3).

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/mo

Ref: ID# 765213

Enc. Submitted documents

c: Requestor
(w/o enclosures)