



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2012

Ms. Rachel L. Lindsay
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2012-18423

Dear Ms. Lindsay:

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# 471021 (ORR# 10-6009).

The McKinney Police Department (the "department"), which you represent, received a request for records related to the requestor and a named individual at a specified address during a particular time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the information you have submitted is not responsive to the instant request because it was created outside the time period specified in the request. This ruling does not address the public availability of the non-responsive information, which we have marked, nor is the department required to release non-responsive information in response to this request.

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 exception encompasses information made confidential by other statutes. Section 261.201 of the Family Code 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 [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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

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

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). We find some of the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code or in providing services as a result of an investigation, so as to fall within the scope of section 261.201(a)(2). *See id.* § 261.001(1), (4) (defining “abuse”

and “neglect” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of Fam. Code ch. 261), Penal Code § 22.041(b)-(c) (defining “child” for purposes of offense of abandoning or endangering a child). Thus, this information, which we have marked, is confidential under 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

We note, however, that the requestor, who is not alleged to have committed the suspected abuse or neglect, may be a parent, managing conservator, or other legal representative of one or more of the child victims. *See* Fam. Code § 261.201(k). Thus, we must rule conditionally. If the requestor is not a parent, managing conservator, or other legal representative of one or more of the child victims, the department must withhold the information we have marked under section 552.101 in conjunction with section 261.201(a) of the Family Code. If, however, the requestor is a parent, managing conservator, or other legal representative of one or more of the child victims, the department may not use section 261.201(a) to withhold the marked information from this requestor. *Id.* In that instance, we note section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Additionally, section 261.201(l)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will address your argument under section 552.108 of the Government Code for this information along with the remaining submitted information.

Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the information at issue is related to closed cases that did not result in a conviction or a deferred adjudication. Based on your representation and our review, we find the information at issue deals with the detection, investigation, or prosecution of crime in relation to concluded investigations that did not result in conviction or deferred adjudication.

We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). As noted above, the identity of a party who makes a report of abuse or neglect must be withheld under section 261.201(l)(3) of the Family

Code. Thus, in releasing basic information, the department must withhold the reporting party's identity under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code, provided the requestor is a parent, managing conservator, or other legal representative of one or more of the child victims listed in the report.

We understand you to contend some of the basic information is protected by common-law privacy under section 552.101 of the Government Code. Section 552.101 also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82.

Common-law privacy protects the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

We find the information we have marked is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. Except for the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 261.201(1)(3) of the Family Code, the department must release basic information in accordance with section 552.108(c). *See* ORD 127 at 3-4. The department may withhold the remaining responsive information under section 552.108(a)(2) of the Government Code.

In summary, if the requestor is not a parent, managing conservator, or other legal representative of one or more of the child victims, the department must withhold the information we have marked under section 552.101 in conjunction with section 261.201(a) of the Family Code. In that instance, except for basic information which must be released, the department may withhold the remaining responsive information under section 552.108(a)(2) of the Government Code. If the requestor is a parent, managing conservator, or other legal representative of one or more of the child victims, the department may withhold the responsive information under section 552.108(a)(2) of the Government Code, except for basic information. In releasing basic information in accordance with section 552.108(c), the department must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, and (2) the reporting party's identity under section 552.101 of the

Government Code in conjunction with section 261.201(1)(3) of the Family Code, provided the requestor is a parent, managing conservator, or other legal representative of one or more of the child victims listed in the report.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 471021

Enc. Submitted documents

c: Requestor
(w/o enclosures)