



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 19, 2017

Mr. Stephen D. Gates
First Assistant City Attorney
City of Midland
P. O. Box 1152
Midland, Texas, 79702-1152

OR2017-08375

Dear Mr. Gates:

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# 653791 (ID#MM019976-013117).

The City of Midland (the "city") received a request for specified incident reports. You state you have released some information. You claim portions of the submitted information are 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. This section encompasses information made confidential by other statutes, such as section 261.201(a) 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

(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.

Fam. Code § 261.201(a). You assert Exhibit B pertains to investigations of alleged or suspected abuse or neglect of children. *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 this section as person under eighteen years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Upon review, we find report number MP160108704 was used or developed in an investigation of alleged or suspected child abuse or neglect. Accordingly, report number MP160108704 is within the scope of section 261.201 of the Family Code. You have not indicated the city’s police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the city must withhold report number MP160108704 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Further, we find report number MP161008521 was used or developed in an investigation of abuse. However, we cannot determine from the submitted information whether the victim in report number MP161008521 was under 18 years of age at the time of the alleged abuse. Thus, we must rule conditionally. Therefore, if the victim in report number MP161008521 was under the age of eighteen at the time of the incident at issue, then the city must withhold this report under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the victim was not under eighteen years of age at the time of the alleged abuse, then the city may not withhold the information on that basis.

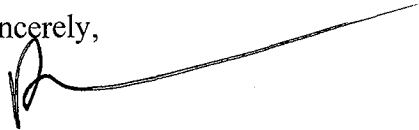
Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold report number MP160108704 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If report number MP161008521 concerns a victim under eighteen years of age at the time of the alleged abuse, the city must withhold this report under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city 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,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/eb

Ref: ID# 653791

Enc. Submitted documents

c: Requestor
(w/o enclosures)