



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 29, 2019

Mr. Gregory L. Grigg  
Chief of Police  
Deer Park Police Department  
2911 Center Street  
Deer Park, Texas 77536-4942

OR2019-14230

Dear Mr. Grigg:

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# 768206 (ORR# 2019-0804).

The Deer Park Police Department (the "department") received a request for all correspondence sent by a named employee to the Office of the Attorney General on a specified date. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2019-14156 (2019). In that ruling, we determined (1) certain information was not subject to the Act and need not be released; the department (2) must withhold certain information under section 552.101 of the Government Code in conjunction with section 6103(a) of Title 26 of the United States Code, section 58.008 of the Family Code, section 261.201 of the Family Code, section 418.176 of the Government Code, and common-law privacy, and under section 552.102 of the Government Code; the department (3) may withhold certain information under sections 552.108(a)(1) and 552.108(b)(1) of the Government Code; and (4) the

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<sup>1</sup>Although you do not raise sections 552.101, 552.108, or 552.117 of the Government Code in your brief, we understand you to raise this exception based on your markings in the documents.

department must release the remaining information in accordance with copyright law. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the department must continue to rely on Open Records Letter No. 2019-14156 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your arguments against disclosure of the information not subject to the previous ruling.

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 261.201 of the Family Code, which provides, in pertinent part, as follows:

(a) Except as provided by Section 261.203, the 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 some of the submitted information is subject to chapter 261 of the Family Code. Upon review, however, we find you have failed to demonstrate the information at issue is a report of child abuse or neglect, or was used or developed in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). Therefore, we conclude section 261.201 of the Family Code is not applicable to the information you marked, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.108(b)(1) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d at 327 (section 552.108(b)(1) protects information that,

if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable to generally known policies and procedures. *See e.g.* Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). Upon review, we find you have failed to demonstrate the release of the information at issue would interfere with law enforcement or prosecution efforts. Accordingly, the department may not withhold any of the submitted information under section 552.108(b)(1) of the Government Code.

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 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. However, we find no portion of the submitted information is highly intimate or embarrassing and of no legitimate public concern, and the department may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code.<sup>2</sup> Gov’t Code § 552.117(a)(2). Upon review, we find the department must withhold the information you marked under section 552.117(a)(2) of the Government Code.

In summary, the department must continue to rely on Open Records Letter No. 2019-14156 as a previous determination and withhold or release the information at issue in accordance

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<sup>2</sup>Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

with that ruling. The department must withhold the information you marked under section 552.117(a)(2) of the Government 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](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,

A handwritten signature in black ink that reads "Emily Kunst". The signature is written in a cursive style with a large initial "E".

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/gw

Ref: ID# 768206

Enc. Submitted documents

c: Requestor  
(w/o enclosures)