



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 21, 2019

Ms. Sally Ortiz
Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2019-17004

Dear Ms. Ortiz:

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# 773370 (Tracking No. P000798-041819).

The Plano Police Department (the "department") received a request for all incident reports involving a specified address during a specified time period, all incident reports involving a named individual and another specified address, and a specified incident report. You state you have released some information to the requestor. 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.

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 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). Upon review, we find Exhibit B was used or developed in an investigation of alleged or suspected child abuse or neglect. *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). Accordingly, we find this information is subject to section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the information at issue is confidential pursuant to section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* Accordingly, the department must withhold Exhibit B in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹

Section 552.108(a)(2) of the Government Code exempts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibit C concerns a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to Exhibit C.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the 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 also Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information).* We note basic information includes, among other items, a detailed description of the offense and the identity of the

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

complainant. See ORD 127 at 3-4. Thus, with the exception of basic information, the department may withhold Exhibit C under section 552.108(a)(2) of the Government Code.²

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. This common-law right to privacy protects the identifying information of a complainant in certain situations based on the facts of the case. See Open Records Decision No. 394 (1983); see also Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense). Upon review, we find some of the basic information at issue to be highly intimate or embarrassing and is not of legitimate concern to the public. Accordingly, the department must withhold the complainant's identity within the basic information in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining basic information in Exhibit C is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold the remaining basic information in Exhibit C under section 552.101 on this basis.

In summary, the department must withhold Exhibit B in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, which must be released, the department may withhold Exhibit C under section 552.108(a)(2) of the Government Code. In releasing the basic information, the department must withhold the complainant's identity within the basic information in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy.

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

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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, appearing to read "Tim Neal". The signature is stylized with a large, sweeping "T" and "N".

Tim Neal
Assistant Attorney General
Open Records Division

TN/eb

Ref: ID# 773370

Enc. Submitted documents

c: Requestor
(w/o enclosures)