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ATTORNEY GENERAL OF TEXAS

November 5, 2019

Ms. Julie P. Doshier
Counsel for City of Allen
Nichols Jackson Dillard Hager Smith, LLP
500 North Akard Street, Suite 1800
Dallas, Texas 75201

OR2019-31184

Dear Ms. Doshier:

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# 795496 (Reference No. 110539).

The City of Allen (the "city"), which you represent, received a request for all records related to investigations of three police officers during a specified time period. You state you released some of the requested information. You state the city will redact certain information subject to section 552.130(c) of the Government Code and pursuant to the previous determination issued in Open Records Letter No. 2018-11817 (2018).¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Letter No. 2018-11817 is a previous determination issued to the city authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without seeking a ruling from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

² We note, and the city acknowledges, the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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, including section 418.182 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Section 418.182 provides, in relevant part:

(a) [i]nformation ... in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact that information may be related to a security system does not make such information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting section 418.182 must adequately explain how the responsive records fall within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the submitted video recordings consist of video footage from surveillance cameras at the Allen Police Department. You state release of this information would reveal the surveillance cameras’ locations. You state the surveillance system is used “to protect public property in the [c]ity from terrorism . . . and criminal activity.” Upon review, we find the submitted video recordings relate to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep’t of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (finding confidential under section 418.182 of the HSA video recording containing images recorded by security cameras in Texas Capitol hallway because specifications of security system included cameras’ capabilities and video recording demonstrated those capabilities through characteristics, quality, and clarity of images recorded). Accordingly, the city must withhold the submitted video recordings under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.³

Section 552.101 of the Government Code also encompasses information that is made confidential by section 261.201(a) of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 state the information you marked 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). Thus, based on our review, we find the information at issue is within the scope of section 261.201 of the Family Code. You have not indicated the city has adopted a rule that governs the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.⁴ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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 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). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing information of an individual that is of no legitimate public concern. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.


⁴ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

In summary, the city must withhold the submitted video recordings under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. The city must withhold the information you marked 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Emily Buchanan
Assistant Attorney General
Open Records Division

EBO/gw

Ref: ID# 795496

Enc. Submitted documents

c: Requestor
(w/o enclosures)