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ATTORNEY GENERAL OF TEXAS

January 14, 2020

Ms. Allison A. Bastian
Counsel for the City of Harlingen
Denton, Navarro, Rocha, Bernal & Zech, P.C.
701 East Harrison, Suite 100
Harlingen, Texas 78550-9165

OR2020-01375

Dear Ms. Bastian:

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# 806162.

The City of Harlingen (the "city"), which you represent, received a request for crime statistics pertaining to specified crimes within a specified location. You state the city released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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 We note the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the exception the city claims 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.

(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 portions of the submitted information were used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the city. *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). We note the city must not release basic information when a report is confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Accordingly, we find the information you marked is subject to chapter 261 of the Family Code. The city does not indicate it has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude 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. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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. We note information relating to domestic violence is generally not protected by common-law privacy. *See* Open Records Decision No. 611 at 1 (1992) (family violence is a crime, not a private matter). In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, we find portions of the submitted information relate to incidents involving sexual assault or other sex-related offenses. Therefore, to the extent any of the submitted information consists of the home address of a victim of sexual assault or other sex-related offense, the city must withhold that information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any portion of the remaining information is highly intimate

or embarrassing information of an identifiable individual and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, 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. To the extent any of the submitted information consists of the home address of a victim of sexual assault or other sex-related offense, the city must withhold that information under section 552.101 of the Government Code in conjunction with common-law privacy.² 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,



Katie Stallcup
Attorney
Open Records Division

AKS/eb

Ref: ID# 806162

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² Although the requestor is a representative of the United States Army, he does not indicate he has a right of access to the submitted information under state or federal law. *See* Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986).