



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 4, 2020

Mr. Whitt L. Wyatt
Counsel for the City of Colleyville
C/O Colleyville Police Department
5201 Riverwalk Drive
Colleyville, Texas 76034

OR2020-06827

Dear Mr. Wyatt:

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# 815303 (Ref. Nos. PD-19-0122 and PD-19-0123).

The Colleyville Police Department (the "department"), which you represent, received two requests from different requestors for a specified incident report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 exception encompasses section 261.201 of the Family Code, which provides, in relevant part, the following:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). You state, and we agree, the submitted information was used or developed by the department 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). We note the second requestor is a parent of the child victim listed in the information at issue. However, the second requestor is accused of committing the alleged abuse or neglect in the submitted information. Thus, the second requestor does not have a right of access to the submitted information under section 261.201(k). *Id.* § 261.201(k). Accordingly, we conclude the department must withhold the submitted information from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

However, we note the first requestor may be a parent, guardian, or managing conservator of the child victim listed in the information at issue, and the first requestor is not alleged to

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure with respect to this requestor.

have committed the abuse or neglect. As such, the first requestor may have a right of access to this information pursuant to section 261.201(k). As we are unable to determine whether the first requestor is a parent, guardian, or managing conservator of the child victim, we rule conditionally. If the first requestor is not a parent, guardian, or managing conservator of the child victim listed in the information at issue, then the department must withhold the submitted information from the first requestor in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Conversely, if the first requestor is a parent, guardian, or managing conservator of the child victim, then the department may not withhold the submitted information from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *Id.* § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, to the extent the first requestor is a parent, guardian, or managing conservator of the child victim in the submitted information, we will consider your remaining arguments against disclosure of this information.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). You state the submitted information relates to an ongoing criminal investigation. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) 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

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

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). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

We understand you seek to withhold the entirety of the basic information under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the basic information at issue must be withheld on the basis of common-law privacy. Accordingly, the department may not withhold the entirety of the basic information under section 552.101 of the Government Code on that basis. Upon review, we find some of the basic information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the basic information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining basic information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining basic information under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold the submitted information from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the first requestor is not a parent, guardian, or managing conservator of the child victim listed in the information at issue, then the department must withhold the submitted information from the first requestor in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the first requestor is a parent, guardian, or managing conservator of the child victim listed in the information at issue, then with the exception of basic information, which must be released to the first requestor, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the basic information to the first requestor, the department must withhold the information we have marked 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 <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,

A handwritten signature in black ink, appearing to read 'Tim Neal', with a stylized flourish at the end.

Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 815303

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)