



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2020

Ms. Janese Dubash
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2020-13199

Dear Ms. Dubash:

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# 827555 (ORR# W098320).

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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, 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.

(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.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

Fam. Code § 261.201(a). Upon review, we find the submitted information was used or developed in an investigation by the city's police department (the "department") of alleged child abuse or neglect. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201). However, the conduct at issue occurred in a facility that may be regulated under chapter 42 of the Human Resources Code. Section 261.201 does not apply to an investigation of child abuse or neglect that occurred in a home or facility regulated by the Texas Department of Family and Protective Services under chapter 42. Family Code § 261.201(h). Thus, we must rule conditionally. If the facility at issue in the submitted information is not regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code, then the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). If the facility at issue is regulated under chapter 42 of the Human Resources Code, then the submitted information is not confidential under section 261.201(a) of the Family Code and the city may not withhold it under section 552.101 of the Government Code on that basis.

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 the *Industrial Foundation* decision. *Id.* at 683. Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, if the facility at issue is regulated under chapter 42 of the Human Resources Code, then the city must withhold the identifying information of the victim at issue in the submitted report under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the facility at issue in the submitted information is not regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code, then the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the facility at issue is regulated under chapter 42 of the Human Resources Code,

¹ Although the requestor is a representative of the Texas Health and Human Services Commission, she does not indicate she has a right of access to this information under state or federal law. *See* Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986).

then the city must withhold the identifying information of the victim at issue in the submitted report under section 552.101 of the Government Code in conjunction with common-law privacy but 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 827555

Enc. Submitted documents

c: Requestor
(w/o enclosures)