



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 23, 2022

Mr. L. Brian Narvaez
Counsel for City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2022-05458

Dear Mr. Narvaez:

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# 931815 (Ref. No. P021256).

The City of McKinney (the "city"), which you represent, received a request for information relating to violent crimes pertaining to a specified address for a stated time period. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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(a) of the Family Code, which provides as follows:

[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). You state some of the submitted information was used or developed in investigations of alleged child abuse or neglect under chapter 261 of the Family Code. *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 of Family Code). However, we are unable to determine the ages of the victims. Accordingly, we must rule conditionally. To the extent this information involves a victim of alleged abuse or neglect who was under eighteen years of age at the time of the offense, the city must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Conversely, to the extent this information does not involve a victim of alleged abuse or neglect who is under eighteen years of age at the time of the offense, the information is not confidential under section 261.201 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 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. 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 the information you marked may satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, to the extent the remaining information you marked identifies victims of alleged sexual assault, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the information you marked involves a victim of alleged abuse or neglect who was under eighteen years of age at the time of the offense, the city must withhold that information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent the remaining information you marked identifies victims of alleged sexual assault, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release any 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,

Sarah E. Reese
Attorney
Open Records Division

SER/jxd

Ref: ID# 931815

Enc. Submitted documents

c: Requestor
(w/o enclosures)