



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 20, 2022

Ms. Amanda Davis  
Counsel for Town of Little Elm  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2022-34278

Dear Ms. Davis:

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# 979295 (ID No. P000726).

The Town of Little Elm (the "town"), which you represent, received a request for calls for service pertaining to two specified addresses during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 section encompasses section 261.201(a) of the Family Code, which provides as follows:

(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, 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 Exhibit C was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the town's police department. *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). Based on the town's representation and our review, we find Exhibit C was used or developed in an investigation of alleged child abuse or neglect and is subject to section 261.201 of the Family Code. The town does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the town must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>1</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* § 552.108(a)(2), .301(e)(1)(A). You state the remaining information pertains to closed criminal investigations that did not result in convictions or deferred adjudications. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the remaining information. Thus, section 552.108(a)(2) of the Government Code is applicable to the remaining information.

However, we note 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the town may withhold the remaining information under section 552.108(a)(2) of the Government Code.

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. 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 you have not demonstrated any of the basic information is highly intimate or embarrassing and

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

not of legitimate concern. Thus, the basic information may not be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the town must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, which must be released, the town may withhold the remaining information under section 552.108(a)(2) of the Government Code.

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,

Justin H. Miller  
Attorney  
Open Records Division

JHM/eb

Ref: ID# 979295

Enc. Submitted documents

c: Requestor  
(w/o enclosures)