



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 8, 2004

Ms. Maleshia B. Farmer  
Assistant City Attorney  
Office of the City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2004-7651

Dear Ms. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208726.

The City of Fort Worth (the "city") received a request for information pertaining to three specified individuals. You state that the city will release some of the requested information to the requestor. You claim that the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have 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. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes. Section 261.201 of the Family Code provides in part:

(a) The 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) 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). Based on your representations and our review of the submitted information, we find that portions of this information, which we have marked, constitute files, reports, records, communications, and/or working papers used or developed in an investigation conducted under chapter 261 of the Family Code. You state that the city has not adopted any rules that govern the release of this type of information. Accordingly, we conclude that the city must withhold the information that we have marked pursuant to 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) (applying predecessor statute).

Section 552.101 also encompasses information that is protected from disclosure by the common-law right to privacy. Information is protected from disclosure by the common-law right to privacy when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S.749(1989). In this instance, the requestor seeks copies of unspecified information in which three specified individuals are identified. Thus, the request requires the city to compile information relating to these three individuals. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates these individuals' right to privacy to the extent that it includes investigations in which they were criminal suspects, arrestees, or defendants. Accordingly, we conclude that to the extent that the city maintains responsive information that reveals that these three specified individuals were criminal suspects, arrestees, or defendants, such information must be withheld from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy on the basis of *Reporters*. We note that we have marked portions of the submitted

information that are otherwise excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.<sup>1</sup>

In summary, to the extent that the city maintains responsive information that reveals that the three specified individuals were criminal suspects, arrestees, or defendants, such information must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The city must withhold the portions of the submitted information that we have marked pursuant to section 552.101 in conjunction with section 261.201 of the Family Code and the common-law right to privacy. The city must release the remaining submitted information to the requestor.

Finally, you request that we issue the city a previous determination that would allow it to withhold, in response to future requests, information pertaining to investigations of child abuse or neglect and law enforcement records relating to the delinquent conduct of juveniles without the necessity of requesting a decision from us with regard to such information. We decline to issue the city such a previous determination at this time.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining arguments.

that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/krl

Ref: ID# 208726

Enc. Marked documents

c: Mr. Frank P. Colosi  
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(w/o enclosures)