



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2007

Mr. Samuel D. Hawk
Assistant City Attorney
Criminal Law and Police Division
1400 South Lamar
Dallas, Texas 75215

OR2007-14905

Dear Mr. Hawk:

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# 294516.

The Dallas Police Department (the "department") received a request for all police reports for a specific address during a specified time period. You claim that the requested 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 representative sample of information.¹

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 information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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, 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). Upon review, we find that a portion of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code. As such, incident report number 0251499-T is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(C) (definition of “child abuse” includes “physical injury that results in substantial harm to the child”). You do not indicate that the department has adopted a rule governing the release of this type of information; therefore, we assume that no such rule exists. Given that assumption, we conclude that incident report number 0251499-T is confidential pursuant to section 261.201 of the Family Code, and the department must withhold it in its entirety under section 552.101 of the Government Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, upon review of the remaining submitted information, we find that the department has failed to demonstrate how the remaining information was used or developed in an investigation of child abuse or neglect under chapter 261 of the Family Code. Therefore, we determine that section 261.201 is not applicable to the remaining submitted information, and the department may not withhold any portion of it under section 552.101 in conjunction with section 261.201 of the Family Code.

You also assert that some of the submitted information is protected under common-law privacy. Section 552.101 encompasses common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual

²We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child’s parent(s) may have the right to review that file. *See* Fam. Code § 261.201(g). As our ruling for this incident report is dispositive, we need not address your claim under section 552.108 of the Government Code.

assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find that none of the remaining information is protected by common-law privacy. Therefore, none of it may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold incident report number 0251499-T under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The remaining submitted information must be released to the requestor.³

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report 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).

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 Office of the Attorney General 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. 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,



Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 294516

Enc. Submitted documents

c: Ms. Kimberly Jones
14440 Marsha Drive
Balch Springs, Texas 75180
(w/o enclosures)