



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2008

Mr. Joseph J. Gorfida, Jr.
Assistant City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2008-04693

Dear Mr. Gorfida:

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# 306677.

The Richardson Police Department (the "department") received a request for all incident reports pertaining to the requestor and his address within the time period of February 10, 2002 through January 18, 2008. You indicate the department has provided some information to the requestor. However, you argue that the submitted information is excepted from disclosure under sections 552.101 and 552.130 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 information protected by other statutes, including section 261.201(a) of the Family Code, which provides as follows:

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). A portion of the submitted information constitutes files, reports, records, communications, or working papers used or developed in an investigation of child abuse or neglect under chapter 261; therefore, this information is within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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)(A)-(K) (definition of child abuse). You do not inform us that the department has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given this assumption, we agree that incident report numbers 02-061027, 06-076865, and 07-069313 are confidential pursuant to section 261.201 of the Family Code, and that the department must withhold these reports in their entirety under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy 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 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. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the submitted information must be withheld in its entirety to protect the individual’s privacy. In this instance, the submitted documents reveal that the requestor knows the identity of the individual involved as well as the nature of the submitted information in incident report number 07-034376. Therefore, withholding only the individual’s identity or certain details of the incident from the requestor would not preserve the subject individual’s common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, we agree that the department must withhold incident report number 07-034376 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). Accordingly, we agree that the department must withhold the Texas driver’s license numbers you have marked under section 552.130.

In summary, the department must withhold incident report numbers 02-061027, 06-07685, and 07-069313 in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ The department must withhold incident report number 07-034376 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Finally, the department must withhold the Texas driver's license numbers you have marked under section 552.130 of the Government Code. The remaining information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge that decision by suing the governmental

¹ We note that a parent of children who are the subjects of reported abuse or neglect has a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services ("DFPS"). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if DFPS has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure. Fam. Code § 261.201(g).

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 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,



Chanita Chantaplin-McLelland
Assistant Attorney General
Open Records Division

CC/mcf

Ref: ID# 306677

Enc. Submitted documents

cc: Mr. Michael Downey
1112 Eton Drive
Richardson, Texas 75080
(w/o enclosures)