



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2008

Mr. Samuel D. Hawk
Assistant City Attorney
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215-1815

OR2008-14075

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#324463.

The Dallas Police Department (the "department") received a request for certain police reports. You claim that 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 information made confidential by statute, such as section 261.201(a) of the Family Code.¹ Section 261.201(a) provides as follows:

(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

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Report number 0149592-U relates to an investigation of the alleged sexual assault of a minor. *See id.* § 261.001(1)(E) (definition of child abuse includes "aggravated sexual assault under Section 22.021, Penal Code"). Upon review, we find that this report falls within the scope of section 261.201. There is no indication that the department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, report number 0149592-U is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). The department must withhold the submitted report in its entirety under section 552.101 of the Government Code.

Section 552.101 also extends to the confidentiality provisions of Family Code section 51.14. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). Report number 0371306-T involves juvenile suspects engaged in conduct that occurred before January 1, 1996. Based on our review, we conclude that section 51.14(d) is applicable to report number 0371306-T. Therefore, this document must be withheld in its entirety under section 552.101 in conjunction with section 51.14 of the Family Code.

You argue that section 552.101 and common-law privacy protect the remaining information from required disclosure. The doctrine of common-law privacy protects information that (1) contains highly intimate or embarrassing facts such that release would be highly objectionable to a reasonable person and (2) is of no 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 the test must be satisfied. *Id.* at 681-82. 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 the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). You state that the requestor knows the identity of the alleged victims in the submitted offense reports. Thus, withholding only the identifying information from the requestor would not preserve the victims' common-law right to privacy. We therefore conclude that the department must withhold the remaining information in its

entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, report number 0149592-U must be withheld pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. The department must withhold report 0371306-T under section 552.101 in conjunction with section 51.14 of the Family Code. The remaining information must be withheld pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

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). If the governmental body does not file suit over 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 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/jb

Ref: ID#324463

Enc. Submitted documents

c: Mr. Rodney Turner
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Dallas, Texas 75217
(w/o enclosures)