



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2008

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2008-16587

Dear Ms. Byles:

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# 329577 (FWPD 08-108342; PIR 5353-08).

The City of Fort Worth (the "city") received a request for a specific police report. You have redacted Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). 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 exception encompasses information that another statute makes confidential. You contend that the requested information is confidential under section 48.101 of the Human Resources Code, which pertains to the disclosure of reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 provides in pertinent part as follows:

- (a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

- (1) a report of abuse, neglect, or exploitation made under this chapter;
- (2) the identity of the person making the report; and
- (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by [the Texas Department of Family and Protective Services] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101. The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are the Department of Family and Protective Services and certain other state agencies, depending on the circumstances surrounding the incident. *See id.* §§ 48.151, 48.152, 48.252, 48.301. Thus, records of a police department investigation generally are not subject to section 48.101. The requested information was created by the city's police department pursuant to its own investigation into an alleged abuse. Thus, we conclude that the requested information was not used or developed in an investigation made under chapter 48 of the Human Resources Code. Therefore, it may not be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) 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 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. Further, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we have marked portions of the requested information that are confidential and must be withheld under section 552.101 in conjunction with common-law privacy. We find, however, that you have failed to demonstrate how any of the remaining information constitutes highly intimate or embarrassing information, the release of which would be highly objectionable to a reasonable person. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions against disclosure, 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). 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,

A handwritten signature in black ink, appearing to read "Chris Schulz", written in a cursive style.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/ma

Ref: ID# 329577

Enc. Submitted documents

cc: Requestor
(w/o enclosures)