



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2009

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

OR2009-02582

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# 335897 (Dallas Police Department request number 2008-8575).

The Dallas Police Department (the "department") received a request for two specified incident reports. You claim the requested reports are excepted from disclosure under section 552.101 of the Government Code.¹ 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 protected by other statutes, including section 261.201 of the Family Code, which 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

¹Although the department also raises section 552.108 of the Government Code, you provided no arguments in support of withholding the submitted information under this exception. Therefore, we do not address the applicability of section 552.108 to the submitted information. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

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). Upon review, we find report number 207043-V was used or developed in an investigation of child abuse. Therefore, this report is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section 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). You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, report number 207043-V is confidential pursuant to section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).³ Although you also raise section 261.201 for report number 171994-V, you have failed to demonstrate that any portion of this report was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261.201(2). Furthermore, you have not established this report is a report of alleged or suspected abuse or neglect made under chapter 261.201(1). *See id.* § 261.001(1)(C) (defining “abuse” to exclude “reasonable discipline by a parent” for purposes of section 261.201). Therefore, the department may not withhold report number 171994-V under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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

²We note that if the Texas Department of Family and Protective Services has created a file on this case, the child’s parent(s) may have the statutory right to review the file. *See* Fam. Code § 261.201(g).

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

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. While you raise section 552.101 in conjunction with common-law privacy, we determine that none of the information in the remaining report is highly intimate or embarrassing, the publication of which would be objectionable to a reasonable person. Therefore, the department may not withhold any portion of report number 171994-V under section 552.101 on the basis of common-law privacy.

In summary, the department must withhold report number 207043-V under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As you raise no other argument against disclosure, the remaining information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 335897

Enc. Submitted documents

cc: Requestor
(w/o enclosures)