



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2009

Ms. Teresa J. Brown
Sr. Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2009-17938

Dear Ms. Brown:

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# 364792.

The City of Plano (the "city") received a request for information pertaining to a specified incident. You state you have released some information. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The types of information considered intimate or 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. *See id.* at 683. However, the common-law right to privacy is a personal right that lapses at death, and therefore it does not encompass information that relates to a deceased individual.

See Moore v. Charles B. Pierce Film Enterprises Inc., 589 S.W.2d 489 (Tex. Civ. App.--- Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976). Upon review, we find that no portion of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, no portion of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] 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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

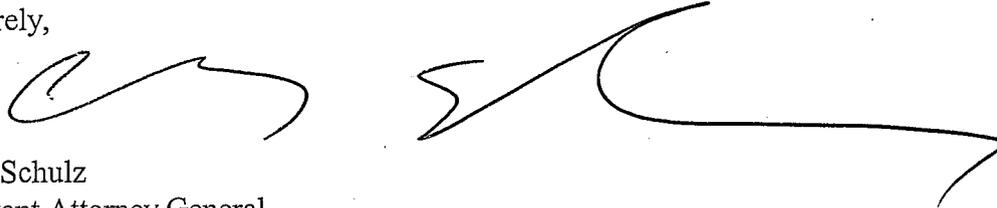
Fam. Code § 261.201(a). We note that a portion of the submitted information, which we have marked, pertains to a report of alleged or suspected child abuse or neglect. *See id.* § 261.201(a)(1), .001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (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). Accordingly, the information we have marked in the submitted information is within the scope of section 261.201 of the Family Code. You do not state that the city has adopted a rule that governs the release of this type of information. Thus, we assume no such rule exists. Therefore you must withhold the information we have marked under section 552.101 in conjunction with section 261.201 of the Family Code. 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Schulz', written over a horizontal line.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 364792

Enc. Submitted documents

cc: Requestor
(w/o enclosures)