



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2010

Ms. Jenny Gravley
Taylor Olsen Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-1654

OR2010-05774

Dear Ms. Gravley:

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# 377456.

The City of Southlake (the "city"), which you represent, received a request for (1) information pertaining to the termination of the requestor's client and (2) the requestor's client's personnel file. You state that the city is releasing some of the requested 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.

Initially, we note a portion of submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-01064 (2010). In that ruling, our office determined that the city may withhold the information at issue under section 552.108(a)(1) of the Government Code. However, you inform us the circumstances on which Open Records Letter No. 2010-01064 is based have changed as the investigation at issue is no longer pending. Therefore, the city may not rely on Open Records Letter No. 2010-01064 as a previous determination for this information. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address your arguments against

disclosure of the submitted information, including the information addressed in Open Records Letter No. 2010-01064.

Next, we note you have redacted from the submitted documents an e-mail address, a vehicle identification number ("VIN"), a title number, license plate numbers, driver's license numbers, and social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). Further, this office recently issued Open Records Decision No. c684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number and a Texas license plate number under section 552.130 of the Government Code and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. However, you do not assert, nor does our review of our records indicate, that the city has been authorized to withhold the VIN and title number the city redacted without seeking a ruling from this office. *See* Gov't Code § 552.301(a); ORD 673. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. However, in the future, the city must not redact requested information that it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.*

We now address your arguments against disclosure of the remaining 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." *Id.* § 552.101. This exception encompasses information that other statutes make confidential. You state the information you have marked consists of emergency medical service ("EMS") records that are confidential under section 773.091 of the Health and Safety Code, which is encompassed by section 552.101. Section 773.091 provides in relevant part:

Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091(b). This confidentiality "does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services." *Id.* § 773.091(g). Upon review, we agree that the information you have marked constitutes EMS records that are subject to chapter 773 of the Health and Safety Code. Accordingly, the city must withhold the

submitted EMS records under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, except for information subject to section 773.091(g), which must be released.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he 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). You indicate that portions of the submitted information relate to an investigation of alleged neglect of a child. *See id.* § 261.001(4) (defining “neglect” for purposes of chapter 261 of the Family Code); *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). We find that the information we have marked in the submitted documents and indicated in the submitted audio and video recordings was used or developed in an investigation under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). Therefore, we find the information we have marked and indicated is confidential under section 261.201(a) of the Family Code and must be withheld under section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986)* (addressing predecessor statute). However, you have not adequately demonstrated that the remaining information you have marked constitutes reports of alleged or suspected abuse made under chapter 261 or how this information was used or developed in an investigation under chapter 261. *See Fam. Code § 261.201(a)*. Accordingly, the city may not withhold any of the remaining information at issue on the basis of section 261.201.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which excepts from public disclosure private information about an individual if the information (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 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. 540 S.W.2d at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (information pertaining to illness from severe emotional and job-related stress), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities), 343 (1982) (references in emergency medical records to drug overdoses, acute alcohol intoxication, obstetrical or gynecological illnesses, convulsions or seizures, and emotional or mental distress). However, we note information relating to public employees and public employment is generally a matter of legitimate public interest. See Open Records Decision Nos. 444 at 5-6 (1986) (public has legitimate interest in public employee's qualifications, work performance, and circumstances of employee's resignation or termination), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find that portions of the submitted information are highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city must withhold the information we have marked in the submitted documents and indicated in the submitted audio recording under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information you seek to withhold on the basis of common-law privacy is either not highly intimate or embarrassing, or it is of legitimate public interest. Therefore, the city may not withhold any of the remaining information under section 552.101 and common-law privacy.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]"¹ Gov't Code § 552.130. Upon review of the information at issue, we determine that the city must withhold the VIN and title number we have marked in the submitted documents and the license plate numbers we have indicated in the submitted recordings under section 552.130 of the Government Code.

In summary, (1) the city must withhold the EMS records you have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, except for information subject to section 773.091(g); (2) the city must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; (3) the city must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) the city must withhold the information we have marked and indicated under section 552.130 of the Government

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

Code. The remaining information must be released to the requestor. We note that if the city lacks the technical capability to redact the information we have indicated in the audio and video recordings at issue, the city must withhold the recordings in their entirety. *See* Open Records Decision No. 364 (1983).

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 377456

Enc. Submitted documents

c: Requestor
(w/o enclosures)