



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2010

Mr. Mack Reinwand
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2010-07652

Dear Mr. Reinwand:

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# 380853 (APD Ref. No. 308-031010).

The Arlington Police Department (the "department") received a request for information pertaining a specified address during a specified time period. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You inform us that incident report numbers 09-70272, 09-74976, 09-76541, and 10-9199 were the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-07132 (2010). In that decision, we ruled that the department must withhold incident report numbers 09-70272, 09-74976, and 09-76541 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, and, with the exception of basic information, the department may withhold incident report number 10-9199 under section 552.108(a)(1) of the Government Code. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the department may continue to rely on Open Records Letter No. 2010-07132 as a previous determination and withhold or release the same information in accordance with

the previous determination.¹ *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).

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. Section 552.101 encompasses information protected by other statutes, such as 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). We note that incident report numbers 09-78666 and 09-87567 relate to investigations of alleged child abuse. *See id.* § 261.001(1) (defining "abuse" 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). You do not inform us whether the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given this assumption, we find that incident report numbers 09-78666 and 09-87567 are confidential under section 261.201(a) of the Family Code and must be withheld under section 552.101 of the Government Code.² *See* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor to section 261.201).

¹As we are able to make this determination, we need not address your arguments against disclosure of this information.

²As our ruling is dispositive of these incident reports, we need not address your arguments against their disclosure.

Section 552.101 of the Government Code 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 highly 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. *Id.* at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are also excepted from required public disclosure under 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). Generally, only highly intimate or embarrassing information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire incident report must be withheld to protect the individual's privacy. Here, although you seek to withhold incident report number 080057314 in its entirety, you have not demonstrated, nor does the report reflect, a situation in which the entire report must be withheld on the basis of common-law privacy. However, we agree that portions of this report, which we have marked, are highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we have marked in incident report number 080057314 under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing, and it may not be withheld on the basis of common-law privacy.

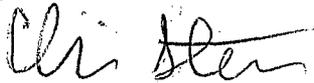
In summary, (1) the department may continue to rely on Open Records Letter No. 2010-07132 as a previous determination and withhold or release incident report numbers 09-70272, 09-74976, 09-76541, and 10-9199 in accordance with the previous determination; (2) the department must withhold incident report numbers 09-78666 and 09-87567 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; and (3) the department must withhold the information we have marked in incident report number 080057314 under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released to the requestor.

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# 380853

Enc. Submitted documents

c: Requestor
(w/o enclosures)