



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2010

Mr. Charles E. Zech
Attorneys for the city of Copperas Cove
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2010-10437

Dear Mr. Zech:

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# 386745.

The City of Copperas Cove (the "city"), which you represent, received a request for all information pertaining incident report numbers 04-3011 and 05-1938. You claim the requested 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.

Initially, we note you have submitted information pertaining to incident report number 05-1937, which is not at issue in the present request. Therefore, this information, which we have marked, is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release non-responsive information in response to the request.

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 made confidential by other statutes. You contend the responsive information is made confidential under section 261.201 of the Family Code, which provides in pertinent 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.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report;
or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (h), (k), (l). You state incident report numbers 04-3011 and 05-1938 were used or developed in investigations of alleged child abuse. *See id.* § 261.001(1) (defining “abuse” for the purpose 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 note section 261.201 does not apply to an investigation of child abuse or neglect in a home or facility regulated under chapter 42 of the Human Resources Code. *See id.* § 261.201(h). You state the incident at issue in incident report number 04-3011 occurred at a child care facility that is regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code. Therefore, we find section 261.201 is not applicable to incident report number 04-3011, and the city may not withhold any portion of that report under section 552.101 on that basis.

Based on your representations and our review, we find section 261.201 is generally applicable to incident report number 05-1938. However, we note the requestor is a parent of the child who is listed as the victim of the alleged or suspected abuse in incident report number 05-1938, and he is not alleged to have committed the abuse in that report. Therefore, incident report number 05-1938 may not be withheld from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(l)(3) provides, however, that the identity of the reporting party must be withheld. In addition, section 261.201(l)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *Id.* § 261.201(l)(2). You claim incident report number 05-1938 is excepted from disclosure under section 552.101 in conjunction with common-law privacy and section 552.108. Accordingly, we will consider the applicability of these sections to incident report number 05-1938. Additionally, we will also address your arguments to withhold incident report number 04-0311 under sections 552.101 and 552.108 of the Government Code.

You contend the submitted reports are confidential on the basis of common-law privacy. 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. *See id.* at 683.

Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decision Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The reports indicate the requestor knows the identity of the alleged victim. Thus, withholding only the alleged victim's identifying information from the requestor would not preserve the victim's common-law right to privacy. However, as stated previously, the requestor is the parent of the child victim whose privacy interest is implicated. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, the requestor has a right of access to information which would otherwise be confidential under common-law privacy, and the city may not withhold any of the information at issue under section 552.101 on that basis.

You next assert the submitted reports are excepted from disclosure under section 552.108(a)(2) of the Government Code, which excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted reports pertain to closed criminal investigations that did not result in conviction or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to the submitted reports.

However, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). As noted above, the identity of the reporting party in incident report number 05-1938 must be redacted. *See* Fam. Code § 261.201(1)(3). Accordingly, with the exception of basic information, the city may withhold incident report numbers 04-3011 and 05-1938 under section 552.108(a)(2) of the Government Code. However, in releasing basic information pertaining to incident report number 05-1938, the city must withhold the reporting party's identity, which we have marked, under section 552.101 in conjunction with section 261.201(1)(3) of the Family Code.

The remaining basic information in this report, as well as the basic information in incident report number 04-3011, must be released to the requestor.¹

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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/tp

Ref: ID# 386745

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note that the information being released contains confidential information to which the requestor has a right of access. See Fam. Code § 261.201(k); see also Gov't Code § 552.023(a). However, if the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office. We also note the remaining information contains a social security number. 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.