



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2010

Ms. Diana Davis
Records Clerk
City of Harker Heights
402 Indian Trail
Harker Heights, Texas 76548

OR2010-16538

Dear Ms. Davis:

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# 398790.

The City of Harker Heights (the "city") received a request for all police reports pertaining to activity at a specified address during a specified time period. You indicate the city has released some of the requested information to the requestor. You claim that some of 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.

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. Section 261.201 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). Upon review, we find that the information we have marked was used or developed in an investigation of child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also* Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). You do not inform us the city 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 the information we have marked is confidential under section 261.201(a) of the Family Code and must be withheld under section 552.101 of the Government Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor to section 261.201). However, you do not explain, nor can we discern from our review, that the remaining information constitutes reports of alleged or suspected abuse or neglect made under chapter 261 or that this information was used or developed in an investigation under chapter 261. *See* Fam. Code § 261.201. Consequently, the city may not withhold the remaining information on the basis of section 261.201 in conjunction with section 552.101.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov’t Code 552.108(a)(2). Section 552.108(b)(2) excepts “[a]n internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” *Id.* § 552.108(b)(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.302(e)(1)(A).

You state that some of the remaining information is related to a police investigation that “has not resulted in a conviction or deferred adjudication.” We note section 552.108(a)(2) and section 552.108(b)(2) are applicable only if the information at issue is related to a concluded criminal case “that *did* not result in conviction or deferred adjudication.” *Id.* § 552.108(a)(2), (b)(2) (emphasis added). Thus, having considered your representations, we find you have not demonstrated that any of the submitted information falls within the scope of

¹As our ruling is dispositive of this information, we need not address your remaining argument against its disclosure.

section 552.108(a)(2) or section 552.108(b)(2). *See id.* § 552.301(e)(1)(A). We therefore conclude the city may not withhold any of the submitted information under section 552.108 of the Government Code.

We note the remaining documents contain information subject to sections 552.101 and 552.130 of the Government Code.² Section 552.101 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 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 also 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 protected by common-law privacy), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we find that portions of the remaining information are highly intimate or embarrassing and of no legitimate public interest. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information related 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. *See* Gov't Code § 552.130(a)(1), (2). Therefore, the city must withhold the Texas license plate numbers and Texas driver's license numbers we have marked under section 552.130 of the Government Code.³

In summary, (1) the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; (2) the city must withhold the information we have marked under

²The 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).

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the city must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.⁴

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# 398790

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We 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. We further note that some of the remaining information is confidential with regard to the general public, but to which the requestor has a right of access under section 552.023 of the Government Code. Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a). Should the city receive another request for this information from someone other than the requestor, the city should again seek a decision from this office.