



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2010

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2010-19004

Dear Mr. Hager:

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# 403393.

The City of Rowlett (the "city"), which you represent, received a request for all call slips and reports at a specified address involving the requestor and a named individual from August 2002 to August 2008. You state the city has released some information to the requestor. You claim 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. This section encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides in part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family 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 assert one of the submitted reports, incident report number 08026801, is subject to chapter 261 of the Family Code. Upon review, we agree incident report number 08026801 was used or developed in an investigation under section 261.201(a). *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the city must withhold incident report number 08026801 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Next, you claim the remaining submitted information is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert the remaining submitted information pertains to closed investigations that did not result in conviction or deferred adjudication. Upon review, we agree section 552.108(a)(2) is applicable to the remaining submitted information.

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ’g 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). However, you seek to withhold the basic information in incident report numbers 03010950, 03027835, and 08026440 under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if it (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 type of information considered highly 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. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, with respect to incident report numbers 03027835 and 08026440, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the basic information must be withheld on the basis of common-law privacy. We note portions of the information within the basic information of incident report numbers 03027835 and 08026440 are highly intimate or embarrassing and of no legitimate public concern. Therefore, the city must withhold the information we have marked in incident report numbers 03027835 and 08026440 under section 552.101 in conjunction with common-law privacy.

We note the basic information in incident report number 03010950 is highly intimate or embarrassing and not of legitimate public interest. However, in this instance, the requestor is the individual whose privacy interests are at issue. *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 the information that would otherwise be confidential under common-law privacy. Accordingly, the city may not withhold any portion of the basic information in incident report number 03010950 from this requestor under section 552.101 on the basis of common-law privacy.

In summary, the city must withhold incident report number 08026801 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Except for basic information, the city may withhold the remaining submitted information under section 552.108(a)(2) of the Government Code. The city must withhold the information we have marked in the remaining basic information in incident report numbers 03027835 and 08026440 under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released to the requestor.¹

¹We note that because the requestor has a special right of access to this information in this instance, the city must again seek a decision from this office if it receives another request for the same information from another 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/tf

Ref: ID# 403393

Enc. Submitted documents

c: Requestor
(w/o enclosures)