



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 24, 2011

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2011-04057

Dear Mr. Mann:

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# 412505 (GCA 11-0027).

The Garland Police Department (the "department") received a request for a specified incident report. You have redacted Texas driver's license numbers and license plate numbers under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009) and social security numbers under section 552.147 of the Government Code.¹ 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.

Section 552.101 of the Government Code excepts from public 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 of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130, without the necessity of requesting an attorney general decision. Section 552.147(b) 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.

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 assert the submitted report is made confidential in its entirety by section 261.201. We note the submitted report pertains to interference with child custody. We conclude you have not demonstrated how the submitted report was used or developed by the department in an investigation under chapter 261. *See id.* § 261.201(a); *see also id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code), *id.* § 101.003(a) (defining “child” for purposes of the Family Code). Accordingly, we conclude the submitted report is not confidential in its entirety under section 261.201(a)(2) of the Family Code and it may not be withheld under section 552.101 of the Government Code on that basis. However, we note a portion of the report, which we have marked, pertains to a report of alleged or suspected child abuse or neglect. *See id.* § 261.201(a)(1). Accordingly, the information we have marked is within the scope of section 261.201(a)(1) of the Family Code. Thus, we conclude the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

You seek to withhold a portion of the remaining information under section 552.108 of the Government Code. Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information pertains to an ongoing criminal investigation. Further, you assert that release of the information you have marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Upon review, we conclude the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

We understand you to assert the remaining information is excepted under section 552.101 in conjunction with common-law privacy. The doctrine of common-law privacy 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. Upon review, we conclude the remaining information is either not highly intimate or embarrassing or is of legitimate public concern. Accordingly, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The remaining information must be released.

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 412505

Enc. Submitted documents

c: Requestor
(w/o enclosures)