



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 15, 2011

Ms. Tiffany Bull
Assistant City Attorney
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR2011-08484

Dear Ms. Bull:

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# 420609 (Ref. Nos. 3566-032811 and 3559-032811).

The Arlington Police Department (the "department") received two requests from different requestors. The first requestor seeks police reports 930051645, 930051647, 930051648, 930054596, and 930044419, a specified arrest report, and any arrest warrant affidavits for a named individual. With the exception of police report 930044419 and the arrest warrant affidavits, the second requestor seeks the same information as the first requestor as well as the full reports for two additional case numbers. You claim the submitted police reports are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 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). You represent police reports 930051645, 930051647, 930051648, 930054596, and 930044419 were used or developed in the department's investigations of the alleged assaults of five different children. *See id.* §§ 261.001(1) (defining "abuse" for purposes of chapter 261 of Family Code), 101.003(a) (defining "child" as person under eighteen years of age who is not and has not been married and who has not had disabilities of minority removed for general purposes). Upon review, we agree police reports 930051645, 930054596, and 930044419 are subject to section 261.201. You have not indicated the department has adopted a rule that governs the release of these reports in this instance; therefore, we assume that no such regulation exists. Given that assumption, we conclude police reports 930051645, 930054596, and 930044419 are confidential under section 261.201. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold these police reports under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We note, however, the victim listed in police report 930051648 was eighteen-years-old at the time of the alleged incident and was therefore not a child for purposes of chapter 261. *See* Fam. Code § 101.003(a). Thus, police report 930051648 may not be withheld under section 261.201. In addition, the age of the victim listed in police report 930051647 is not specified in the report, nor do you explain the victim was under eighteen years of age at the time of the incident. Thus, if the victim in police report 930051647 was under eighteen-years-old at the time of the incident, it must be withheld under section 261.201. If the victim was eighteen-years-old, this police report is not protected by 261.201. We will therefore consider your arguments under section 552.101 in conjunction with common-law privacy for the remaining police reports.

Section 552.101 also encompasses 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. You claim the identity of the perpetrator listed in the remaining police reports is protected under common-law privacy. However, you have not submitted arguments explaining how the perpetrator has a privacy interest in information concerning his alleged criminal acts. Accordingly, you have failed to demonstrate the identity of the perpetrator is protected by common-law privacy. We note, however, information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must generally be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). In this instance, the remaining police reports pertain to alleged sex-

related offenses and include information identifying the victims of these offenses. Therefore, the department must withhold the victim identifying information we marked in police reports 930051647 and 930051648 under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other exceptions to disclosure, the remaining information must be released.

In summary, police reports 930051645, 930054596, and 930044419 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the victim listed in police report 930051647 was under eighteen-years-old at the time of the incident, the report must be withheld under section 552.101 in conjunction with section 261.201. Otherwise, only the marked information in police reports 930051647 and 930051648 must be withheld under section 552.101 in conjunction with common-law privacy. 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eb

Ref: ID# 420609

Enc. Submitted documents

c: Requestors
(w/o enclosures)