



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 17, 2011

Mr. B. Chase Griffith  
Counsel for City of McKinney  
Brown & Hofmeister, LLP  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2011-11919

Dear Mr. Griffith:

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# 427384 (McKinney ORR# 10-3860).

The McKinney Police Department (the "department"), which you represent, received a request for information relating to an incident involving two named individuals, including any incident and arrest report, photographs, witness statements, officer notes, transfer reports, investigation notes, and suspect list. You claim the submitted information is 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. Section 552.101 encompasses information protected by other statutes, including section 261.201 of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the 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). Although you state the submitted information pertains to the department's investigation into the abandonment of a child, we note the information actually concerns an investigation of a domestic disturbance and related matters. You have not explained, nor does the report reflect, how this information was used or developed in an investigation of alleged child abuse or neglect. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes 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 therefore find you have failed to demonstrate section 261.201 of the Family Code is applicable to the submitted report. Accordingly, the department may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. 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. *Id.* at 683. Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, the requestor may be the authorized representative of the individual whose privacy interests are at issue in the submitted information. Accordingly, the requestor may have a special right of access to information that would ordinarily be withheld to protect this individual's common-law privacy interests. *See Gov't Code* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Therefore, if the requestor is the authorized representative of this individual, then the requestor has a special right of access to the information we have marked, and this information may not be withheld from him under section 552.101 in conjunction with common-law privacy. However, if the

requestor does not have a special right of access, then the department must withhold the information we have marked pursuant to section 552.101 in conjunction with common-law privacy.

The remaining information contains information that is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 of the Government Code exempts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See* Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The purpose of section 552.130 is to protect the privacy interests of individuals. As previously noted, the requestor may be an authorized representative of the individual whose information is at issue, and thus may have a right of access to the marked driver's license number. *See* Gov't Code § 552.023(b). Therefore, if the requestor is an authorized representative of this individual, the marked driver's license number may not be withheld from him under section 552.130. If the requestor is not an authorized representative of the named individual, then this information must be withheld under section 552.130.<sup>2</sup>

In summary, if the requestor is the authorized representative of the individual whose information is at issue, then the marked information may not be withheld from the requestor under either section 552.101 of the Government Code in conjunction with common-law privacy or section 552.130. However, if the requestor does not have a special right of access, then the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The remaining information must be released.<sup>3</sup>

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

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup>Because the requestor may have a right of access to some of the information being released, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.

responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](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,



Kirsten Brew  
Assistant Attorney General  
Open Records Division

KB/em

Ref: ID# 427384

Enc. Submitted documents

c: Requestor  
(w/o enclosures)