



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2011

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

OR2011-12289

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# 430464 (ORR# GCA 11-0536).

The Garland Police Department (the "department") received a request for information pertaining to a specified incident. You claim the requested 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. This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

[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 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). The submitted information consists of an incident report related to the arrest of the requestor. You state the responsive information indicates a Child Protective Services (“CPS”) “referral would be done based upon the information contained in the report, and information would be shared with CPS.” You argue the report, thus, is part of an investigation conducted under and subject to chapter 261 of the Family Code. However, although the department made a referral to CPS based on the incident report at issue, we find you have not established the submitted information was used or developed in an investigation under chapter 261. *See id.* § 261.201(a)(2). Thus, we conclude you failed to establish the submitted information is confidential under section 261.201(a), and the department may not withhold it under section 552.101 on that ground.

Section 552.101 also encompasses the doctrine of 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). The types of information considered 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. Upon review, we find no portion of the submitted information is confidential under common-law privacy. Therefore, the department may not withhold any of the submitted information under section 552.101 on that ground. Instead, the department must release the submitted information to the requestor.¹

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.

¹We note the requestor has a right of access to information in the submitted documents that otherwise would be excepted from release under the Act. *See* Gov’t Code § 552.023(a) (“[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.”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the department must again seek a decision from this office if it receives a request for this information from a different requestor. We note, however, pursuant to Open Records Decision No. 684 (2009), the department is authorized to withhold from a different requestor this requestor’s driver’s license number under section 552.130 of the Government Code without requesting a decision from this office. Further, pursuant to section 552.147(b) of the Government Code, the department is authorized to withhold the individual’s social security number without the necessity of requesting a decision from this office.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 430464

Enc. Submitted documents

c: Requestor
(w/o enclosures)