



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 22, 2011

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

OR2011-13741

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# 431608 (GCA 11-0563).

The Garland Police Department (the "department") received a request for police reports pertaining to the requestor's child from 2005 through 2009. You state the department has released some of the requested information, but 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." This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides in relevant part 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 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). The submitted information consists of incident report numbers 2006R008124 and 2009R006174. You assert these reports were used or developed in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Upon review, we find both reports to be within the scope of section 261.201(a). The requestor, however, is a parent of the child victim in these reports. *See id.* § 261.201(k). For incident report number 2009R006174, the requestor was suspected of committing the alleged or suspected abuse. Therefore, we determine the requestor does not have a right of access to this report under section 261.201(k). *See id.* § 261.201(k). Accordingly, the department must withhold

incident report number 2009R006174 under section 552.101 in conjunction with section 261.201 of the Family Code.<sup>1</sup> See Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, for report number 2006R008124, the requestor is not alleged to have committed the suspected abuse. Thus, pursuant to section 261.201(k), the department may not withhold this report from the requestor on the basis of section 261.201(a). See *id.* § 261.201(k). Section 261.201(1)(3) provides, however, that the identity of the reporting party must be withheld. Therefore, the department must withhold the identifying information of the reporting party, which we have marked, under section 552.101 in conjunction with section 261.201(1)(3). In addition, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Thus, we will address your arguments to withhold the information in incident report number 2006R008124 under common-law privacy.

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). You assert incident report number 2006R008124 is confidential under common-law privacy. However, this report pertains to the requestor's child. Because the requestor is the child's representative, the requestor has a right of access to the child's private information pursuant to section 552.023 of the Government Code. 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 individuals request information concerning themselves). Thus, the department may not withhold incident report number 2006R008124 under section 552.101 in conjunction with common-law privacy. Instead, the department must release the remaining information in this report to the requestor.

To conclude, the department must withhold incident report number 2009R006174 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the information we have marked in incident report number 2006R008124 under section 552.101 in conjunction with section 261.201(1)(3) of the Family Code, but must release the remaining information in this report to the requestor pursuant to section 261.201(k).<sup>2</sup>

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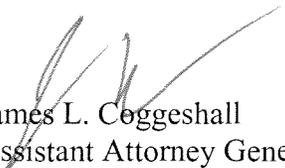
<sup>1</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

<sup>2</sup>Because the requestor has a special right of access to the information being released, the department 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](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# 431608

Enc. Submitted documents

c: Requestor  
(w/o enclosures)