



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 28, 2011

Ms. Lillian Guillen Graham  
Assistant City Attorney  
City of Mesquite  
P.O. Box 850137  
Mesquite, Texas 75185-0137

OR2011-14052

Dear Ms. Graham:

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# 431287.

The Mesquite Police Department (the "department") received a request for incident report number LPD110628068158. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 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 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(a) of the Family Code, which provides:

(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 contend the submitted incident report number LPD110628068158 is confidential under section 261.201 because it pertains to an investigation of improper photography or visual recording of a minor. You have not, however, provided an explanation of, nor does the incident report reflect, how the incident report pertains to a report of alleged or suspected child abuse or neglect, or was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *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). Thus, you have failed to demonstrate the submitted incident report is confidential under section 261.201 of the Family Code. Consequently, the department may not withhold the submitted incident report under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); *see also* Open Records Decision No. 339 (1982) (sexual assault victim has common-law privacy interest that prevents disclosure of information that would identify the victim). You contend some of the information in the submitted incident report is protected by common-law privacy. Upon review, we find the juvenile victim’s identifying information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the juvenile victim’s identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. You seek to withhold additional information you have marked under common-law privacy. Because the identifying information of the individual whose privacy interests are at issue must be withheld, we find release of the remaining information does not implicate the privacy rights of that individual. Consequently, the department may not withhold any of the remaining information on the basis of common-law privacy.

You assert a portion of the remaining information is excepted under section 552.130 of the Government Code, which provides information relating to a motor vehicle operator’s or driver’s license issued by a Texas agency, or an agency of another state or country, is

excepted from public release. 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(a)(1)). The department must withhold the driver's license number you have marked in the remaining information under section 552.130 of the Government Code.

In summary, the department must withhold the juvenile victim's identifying information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the driver's license number you have marked under section 552.130 of the Government Code. The department must release the remaining information.

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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 431287

Enc. Submitted documents

c: Requestor  
(w/o enclosures)