



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2011

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-15881

Dear Ms. Middlebrooks:

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# 434652 (DPD request numbers 2011-7250 and 2011-7459).

The Dallas Police Department (the “department”) received two requests for information pertaining to a specified incident.¹ The first requestor seeks the offense report pertaining to the specified incident, while the second requestor seeks the report as well as additional information pertaining to the specified incident. You claim the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.²

¹We note the first request was received by the department on August 12, 2011, while the second request was received on August 19, 2011. For purposes of this ruling, the requestor whose request was received on August 12 will be referred to as the “first requestor” and the requestor whose request was received on August 19 will be referred to as the “second requestor.”

²We note that with regard to the second request, the department did not timely submit its request for a ruling to this office, and thus failed to comply with section 552.301 of the Government Code with respect to the second request. *See* Gov’t Code § 552.301. However, as sections 552.101 and 552.130 of the Government Code constitute compelling reasons to overcome the presumption of openness, we will address the department’s arguments under these exceptions. *See id.* § 552.302.

We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses information made confidential by other statutes, including 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.

...

(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:

³We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(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). You assert that the requested information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Upon review, we find the submitted information is within the scope of section 261.201(a). You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the submitted information is generally confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold the responsive offense report from the first requestor under section 552.101 of the Government Code as information made confidential by law. We note, however, the second requestor’s clients are the parents of the child victim and are not alleged to have committed the suspected abuse or neglect. Thus, the department may not withhold the submitted information from the second requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). Sections 261.201(l)(1) and 261.201(l)(3) provide, however, that the identity of a child witness under the age of 18 and the identity of the reporting party, respectively, must be withheld. Therefore, the department must withhold the identifying information of a child witness and of the reporting party that we have marked in the submitted documents, and indicated in several of the submitted audio recordings, under section 552.101 of the Government Code in conjunction with sections 261.201(l)(1) and 261.201(l)(3) of the Family Code. In addition, section 261.201(l)(2) of the Family Code states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(l)(2). Thus, we will address your additional arguments under sections 552.101 and 552.130.

Section 552.101 also encompasses the doctrines of common law and constitutional privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. 540 S.W.2d at 683. This office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). In addition, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review of the submitted information, we find that a portion of the information falls under common law privacy, and that there is no legitimate public interest in this information. Therefore, the department must withhold the information we have marked in the submitted documents under section 552.101 in conjunction with common law privacy.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. We understand you to assert the emergency communication district here is subject to section 772.318. Therefore, to the extent the originating telephone number of the 9-1-1 caller you have marked was supplied by a 9-1-1 service supplier, this information is confidential under section 772.318 of the Health and Safety Code and must be withheld from disclosure under section 552.101 of the Government Code. However, if this information was not provided by a 9-1-1 service supplier to the emergency communication district, this information may not be withheld under section 552.101 in conjunction with section 772.318.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The department must withhold the motor vehicle record information you have marked, and the additional information we have marked, as well as the information we have indicated on one of the submitted compact disks, under section 552.130.

To conclude, the department must withhold the responsive offense report from the first requestor pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold from the second requestor the identifying information of a child witness and of the reporting party that we have marked in the submitted documents, and indicated in several of the submitted audio recordings, under section 552.101 of the Government Code in conjunction with sections 261.201(1)(1) and 261.201(1)(3) of the Family Code, respectively. The department must also withhold the information we have marked under section 552.101 in conjunction with common law privacy; the information you have marked under section 552.101 in conjunction with section 772.318 of the Health and Safety Code if it was supplied by a 9-1-1 service supplier; and the information you have marked, and the additional information we have marked, as well as the information we have indicated on one of the submitted compact disks, under section 552.130 of the Government Code. The department must release the remaining submitted information to the second requestor.⁴

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

⁴Because the second 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.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/eb

Ref: ID# 434652

Enc. Submitted documents

c: Requestor
(w/o enclosures)