



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2011

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2011-19050

Dear Ms. Brown:

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# 440605 (Plano Reference Nos. STEJ100511 and STEB102111).

The Plano Police Department (the "department") received two requests for a specified police report.¹ You claim that 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 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:

¹We note the first request was received by the department on October 5, 2011, while the second request was received on October 21, 2011. For purposes of this ruling, the requestor whose request was received on October 5th will be referred to as the "first requestor" and the requestor whose request was received on October 21st will be referred to as the "second requestor."

(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). You claim the requested information was used or developed in an investigation under chapter 261. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). 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 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 is the father of the child victim and is 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). 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 that we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. In addition, section 261.201(1)(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(1)(2). Thus, we will address whether any of the Act's exceptions are applicable to this information.

Section 552.101 of the Government Code 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The types 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 conclude a portion of the submitted information is highly intimate or embarrassing and of no legitimate public concern. Thus, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state, another state, or country is excepted from public release.² Gov't Code § 552.130. Accordingly, the department must withhold the driver's license number and class we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the submitted 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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

identifying information the reporting party that we have marked in the submitted documents under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The department must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information we have marked under section 552.130 of the Government Code. The department must release the remaining submitted information to the second requestor.³

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, 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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/ag

Ref: ID# 440605

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Because 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.