



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2012

Mr. Robert Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606

OR2012-05135

Dear Mr. Ray:

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# 450084.

The Longview Police Department (the "department") received a request for all calls for service, police reports, and 9-1-1 calls for a specified address during a specified time period. You state some information has been released, with certain redactions agreed to by the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the claimed exceptions 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 exception encompasses information made confidential by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part:

(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.

Fam. Code § 261.201(a). Upon review, we agree the information pertaining to report number 11-22948 was used or developed in an investigation under chapter 261. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 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). Therefore, this information is within the scope of section 261.201. You state, and provide documentation showing, the department’s rules pertaining to disclosure of this type of information do not authorize release of such information in this case. Accordingly, the information pertaining to report number 11-22948 is confidential pursuant to section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.¹

Section 552.101 of the Government Code also encompasses section 771.061 of the Health and Safety Code, which makes confidential “[i]nformation that a service provider of telecommunications service is required to furnish to a governmental entity in providing computerized 9-1-1 service” and “[i]nformation that is contained in an address database maintained by a governmental entity or a third party used in providing computerized 9-1-1 service.” Health & Safety Code § 771.061(a). You state that portions of the submitted information originated from an address database that is maintained by a third party for the department. You further state that this information was “used and maintained for the purpose of providing computerized 9-1-1 service.” Based on your representations, we conclude the information you have marked is confidential under section 771.061 and must be withheld under section 552.101 of the Government Code, to the extent such information originated from the department’s 9-1-1 address database. *See Open Records Decision No. 661 at 1-2 (1999).*

Section 552.101 of the Government Code also encompasses the common-law right to 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 met. *Id.* at 681-82. Common-law privacy protects the types

¹Because our ruling as to this information is dispositive, we do not address your remaining arguments against its disclosure.

of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find the remaining information you seek to withhold, including the audio CD you have marked under common-law privacy, is not private and may not be withheld under section 552.101 on that basis.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). Therefore, the department must withhold the information you have marked under section 552.130.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). Therefore, the department may withhold the social security number you have marked under section 552.147(a).²

In summary, the department must withhold the information pertaining to report number 11-22948 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold under section 552.101 of the Government Code the information you have marked in conjunction with section 771.061 of the Health and Safety Code and the information we have marked in conjunction with common-law privacy. The department must withhold the information you marked under section 552.130 of the Government Code and may withhold the information you marked under section 552.147 of the Government Code. The remaining information must be released.

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.

²We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 450084

Enc. Submitted documents

c: Requestor
(w/o enclosures)