



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2012

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

OR2012-05211

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# 450334 (ORR# WEAT011912).

The Plano Police Department (the "department") received a request for information pertaining to a specified incident and a specified coroner report. You state you have released some information to the requestor. You 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." Gov't Code § 552.101. Section 552.101 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 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 protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Generally, only highly intimate information implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, we understand the requestor to know the living individual whose information is at issue in the submitted report and the circumstances surrounding the incident involved. Accordingly, we find Exhibit B must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹

Section 552.101 also encompasses 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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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:

...

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

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find Exhibit C was used or developed by the department in an investigation of alleged child abuse. *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). Accordingly, we find this information is within the scope of section 261.201 of the Family Code. In this instance, however, the requestor may be the managing conservator or other legal representative of the child victim listed in the report, and is not the individual alleged to have committed the suspected abuse. As it is not clear whether the requestor is the managing conservator or other legal representative of the child victim at issue in this incident report for purposes of section 261.201(k), we must rule conditionally. If the requestor is not the managing conservator or other legal representative of the child victim at issue, then the department must withhold Exhibit C in its entirety under section 552.101 in conjunction with section 261.201(a) of the Family Code. Conversely, if the requestor is the managing conservator or other legal representative of the child victim in the submitted report, then pursuant to section 261.201(k), the information at issue may not be withheld from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, subsection 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address whether any of the Act’s exceptions are applicable to Exhibit C.

As previously noted, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. *Industrial Foundation*, 540 S.W.2d at 685. Upon review, we find portions of Exhibit C are highly intimate or embarrassing and of no legitimate public concern. Thus, the department must withhold the information we have marked in Exhibit C under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold Exhibit B in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not the managing conservator or other legal representative of the child listed in the report in Exhibit C, the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is the managing conservator or other legal representative of the child listed in the report in Exhibit

C, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, and release the remaining information to the requestor pursuant to section 261.201(k) of the Family Code.²

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 450334

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note in this instance, the information being released contains confidential information to which the requestor has a right of access as the child's managing conservator or other legal representative. *See* Fam. Code § 261.201(k). If the department receives another request for this information from a different requestor, then the department should again seek a decision from this office.