ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2012

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2012-05413

Dear Ms. McGowan:

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# 450583.

The Dallas Independent School District (the "district") received a request for all police and/or incident reports concerning sexual abuse or child abuse cases. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.[1]

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 section 261.201(a) of the Family Code, which provides:

> (a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under chapter 552, Government

[1]We 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 those submitted to this office.

> 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). You assert the submitted reports were used or developed in investigations 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 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). We note the district is not an agency authorized to conduct a chapter 261 investigation. *See* Fam. Code § 261.103 (listing agencies that may conduct child abuse investigations). However, you state the district has on staff an employee who is shared with the Texas Department of Family and Protective Services ("DFPS") to receive and investigate child abuse claims. Furthermore, you state the submitted information was used by the Dallas Police Department, DFPS, or district police officers, who are commissioned peace officers with the authority to investigate child abuse claims, to investigate such claims. You have not indicated any of the investigating entities have adopted rules that govern the release of this type of information, in this instance; therefore, we assume no such regulations exist. Based on your representations and our review, we agree some of the submitted reports, which we have marked, were used or developed by these investigating agencies in child abuse investigations. However, we are unable to determine the age of the victims in report numbers 103350, 111016, 111021, and 112694. Thus, we must rule conditionally. To the extent the victims in report numbers 103350, 111016, 111021, and 112694 were children as defined by section 101.003 at the time of the incidents at issue, these reports, as well as the reports we have marked, must be withheld in their entirety under section 552.101 in conjunction with section 261.201 of the Family Code.[2] To the extent the victims in report numbers 103350, 111016, 111021, and 112694 were not children as defined by section 101.003 at the time of the incidents at issue, these reports may not be withheld under section 261.201. We note the remaining information includes reports which list the ages of the victims as eighteen, a report listing a child as the suspect, and reports you have not demonstrated pertain to abuse or neglect under chapter 261. Upon review, we find the district has failed to demonstrate any of the remaining information was used or developed in chapter 261 investigations. Thus, the

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[2]As our ruling is dispositive for this information, we need not address your remaining argument against disclosure.

district may not withhold any of the remaining information under section 552.101 in conjunction with section 261.201.

You also assert the submitted information contains the identifying information of individuals that is confidential under section 261.101 of the Family Code. Section 552.101 also encompasses section 261.101 of the Family Code, which provides the identity of an individual making a report under chapter 261 is confidential. *See id.* § 261.101(d). As noted above, you have not demonstrated the remaining information pertains to abuse or neglect under chapter 261. Accordingly, we find you have failed to demonstrate the remaining information contains the identifying information of individuals who made a report of alleged abuse or neglect under chapter 261 of the Family Code. Thus, the district may not withhold any of the remaining information under section 552.101 in conjunction with section 261.101(d).

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. The type of information considered highly intimate or 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. Further, this office has 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 Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, some of the remaining information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.135 of the Government Code provides in part:

> (a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
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> (b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

> (c) Subsection (b) does not apply:
>
> > (1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or
> >
> > (2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or
> >
> > (3) if the informer planned, initiated, or participated in the possible violation.

Gov't Code § 552.135(a)-(c). We note the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of civil, criminal, or regulatory law. Thus, section 552.135 protects the identity of an informer but does not protect witness information or statements. We note this section does not protect the identity of an individual who planned, initiated, or participated in a possible violation of law. *See id.* § 552.135(c)(3). You indicate some of the submitted information identifies employees and students of the district who reported potential violations of criminal or civil laws. You state these individuals have not consented to public disclosure of their entities. Based on your representations and our review, we have marked information the district must withhold under section 552.135 of the Government Code. The remaining information does not identify an informer or the informer is not a student or former student or an employee or former employee of the district. Thus, no portion of the remaining information may be withheld under section 552.135.

Some 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 or permit, title, or registration issued by an agency of this state or another state or country is excepted from public release.[3] *Id.* § 552.130. Accordingly, the district must withhold the driver's license numbers we have marked under section 552.130 of the Government Code.

In summary, to the extent the victims in report numbers 103350, 111016, 111021, and 112694 were children as defined by section 101.003 of the Family Code at the time of the incidents at issue, these reports, as well as the reports we have marked, must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code. To the extent the victims in report numbers 103350, 111016, 111021, and 112694 were not children at the time of the incidents at issue, these reports may not be withheld under section 261.201.

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[3]The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

The district must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The district must also withhold the information we have marked under section 552.135 and the driver's license numbers we have marked under section 552.130. The remaining information must be released.[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 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/em

Ref: ID# 450583

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[4]We note the remaining information includes a social security number. Section 552.147 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. *See* Gov't Code § 552.147(b)