



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 26, 2012

Mr. Tyler F. Wallach  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2012-05972

Dear Mr. Wallach:

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# 451779 (Fort Worth PIR# 11-87987).

The City of Fort Worth (the "city") received a request for report number 11-87987. You state you have redacted driver's license numbers pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

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<sup>1</sup>Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, a motor vehicle operator's or driver's license or permit issued by an agency of this state, or another state or country. Gov't Code § 552.130(c); *see id.* § 552.130(d) (entitling requestor to appeal governmental body's decision to withhold information pursuant to section 552.130(c) to attorney general), .130(e) (requiring governmental body that withholds information pursuant to section 552.130(c) to provide notice to requestor). Additionally, 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. *Id.* § 552.147(b).

Section 552.101 encompasses information that other statutes make confidential, such as section 261.201(a) of the Family Code, which provides:

(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.

Fam. Code § 261.201(a). The victim listed in report number 11-87987 was seventeen years old at the time of the offense. Although section 101.003(a) of the Family Code defines a “child” for purposes of section 261.201 as a “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,” *Id.* § 101.003(a), we note the Penal Code defines a “child” for purposes of indecency with a child as an individual younger than seventeen years of age. *See* Penal Code § 21.11(a). Thus, when read together, section 261.001(1)(E) of the Family Code and section 21.11(a) of the Penal Code prescribe sexual abuse of a child under chapter 261 requires the child be under the age of seventeen. Consequently, you have failed to demonstrate report number 11-87987 was used or developed in an investigation by the city of child abuse or neglect under chapter 261 of the Family Code. Therefore, report number 11-87987 is not confidential under section 261.201 of the Family Code and may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. Whether information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983). Upon review, we find the information you have marked, except where we have marked for release, in addition to the information we have marked, is highly intimate or embarrassing and of no legitimate public interest. Therefore, the city must

withhold the marked information, except where we have marked for release, under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the city must release the remaining information.

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](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,

A handwritten signature in black ink, appearing to read 'VB', with a long horizontal line extending to the right.

Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 451779

Enc. Submitted documents

c: Requestor  
(w/o enclosures)