



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2012

Ms. Delietrice Henry
Open Records Assistant
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2012-06497

Dear Ms. Henry:

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# 452460 (Plano ORR #SCHS021312).

The Plano Police Department (the "department") received a request for thirteen categories of information pertaining to a specified case involving a named individual. We understand the department does not possess some of the requested information.¹ You state the department has released some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code.² We have considered the exceptions 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

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²You have marked information under section 552.130 of the Government Code. We note the department did not raise section 552.130 of the Government Code as an exception to disclosure within ten business days of the date the department received the request. *See* Gov't Code §§ 552.301(b), .302. However, because section 552.130 is a mandatory exception that can provide a compelling reason to withhold information from disclosure, we will address the applicability of this exception to the submitted information, notwithstanding the department's violation of section 552.301(b) in raising this exception. *See id.* § 552.302.

Code § 552.101. This section encompasses information protected by other statutes, such as 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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). Because the submitted information pertains to an investigation of alleged or suspected child abuse, the information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes indecency with child, sexual assault, and aggravated sexual assault under Penal Code sections 21.11, 22.011, and 22.021); *see also* Penal Code §§ 21.11 (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age), 22.011(c)(1) (defining “child” for purposes of sections 22.011 and 22.021 as “a person younger than 17 years of age”), .021(b)(1). In this instance, however, the submitted information reflects that the requestor is the legal representative of two of the child victims. *See* Fam. Code § 261.201(k). Thus, the department may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.*

Subsections 261.201(l)(1) and (3), however, state the personally identifiable information of a victim or witness under the age of eighteen and the identity of the reporting party must be withheld. *Id.* § 261.201(l)(1), (3). Upon review, we find the submitted documents and audio recording 606241 contain identifying information of a child victim who is not the requestor’s client. In addition, the submitted documents, the audio portion of video recording 606246, and audio recording 606247 contain information that identifies reporting parties. We note a reporting party’s voice tends to reveal the reporter’s identity. Thus, the department must withhold the information we have marked in the submitted documents and audio recording 606247 in its entirety under section 552.101 of the Government Code in conjunction with subsections 261.201(l)(1) and (3). Audio recording 606241 is not intertwined with a video recording. You state the department does not have the technological capability to redact information from the submitted recordings. However, because the department had the capability to copy the submitted audio recordings in order to submit the requested information for our review, we believe the department has the capacity to produce a copy of only the non-confidential portions of the audio recording at issue. Therefore, we find the department must withhold only the information we have indicated on audio recording 606241 under section 552.101 of the Government Code in conjunction with subsection 261.201(l)(1). The audio portion of video recording 606246 is intertwined with the video portion of the recording. Accordingly, the department must withhold video recording 606246 in its entirety under section 552.101 of the Government Code in conjunction with subsection 261.201(l)(3). We note you have marked additional information in the submitted documents and indicated additional information in the submitted recordings that you contend identifies a reporting party. However, this information does not identify an individual who made the report of the alleged or suspected abuse; thus, the department may not withhold this information under section 552.101 of the Government Code in conjunction with subsection 261.201(l)(3) of the Family Code. Subsection 261.201(l)(2) states that any information that is excepted from required disclosure under the Act or other law may still be

withheld from disclosure. *Id.* § 261.201(1)(2). Thus, we will address your remaining arguments for the remaining information.

We note the remaining information contains confidential criminal history record information (“CHRI”). Section 552.101 of the Government Code also encompasses laws that make CHRI confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Accordingly, the department must withhold the CHRI we have marked in the submitted documents under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses constitutional and common-law rights to privacy. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions relating to the “zones of privacy” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education the United States Supreme Court has recognized. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual’s privacy interest against the public’s interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs” and the scope of information protected is narrower than that under the common-law doctrine of privacy. *Id.* at 5 (internal quotations omitted) (quoting *Ramie*, 765 F.2d at 492).

Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d 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). This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987), 455 (prescription drugs, illnesses, operations, and physical handicaps).

Upon review, we find the audio portion of video recording 60244 and audio recording 606245 contain information that is highly intimate or embarrassing and not of legitimate public concern. The audio portion of video recording 60244 is intertwined with the video portion of the recording. Accordingly, the department must withhold video recording 60244 in its entirety under section 552.101 in conjunction with common-law privacy. Audio recording 606245 is not intertwined with a video recording; thus, the department must withhold only the portions of audio recording 606245 we indicate under section 552.101 in conjunction with common-law privacy. Additionally, we agree some of the remaining information in the submitted documents is highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold this information, which we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not a matter of legitimate public interest. We also find you have not demonstrated any of the remaining information falls within the zones of privacy or otherwise implicates an individual's privacy interests for the purposes of constitutional privacy. We therefore conclude the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with constitutional or common-law privacy.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). We note some of the information you have marked under section 552.130 pertains to the parent of the requestor's child clients, who is also the requestor's client. Section 552.130 is based on privacy principles; thus, this requestor has a right of access to his client's information and the department may not withhold this information on this basis. *See id.* § 552.023 (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Upon review, we conclude, with the exception of the requestor's client's information, which we have marked for release, the

department must withhold the information you have marked under section 552.130 of the Government Code.

In summary, the department: (1) must withhold the information we have marked in the submitted documents, video recording 606246 and audio recording 606247 in their entirety, and the information we have indicated on audio recording 606241 under section 552.101 of the Government Code in conjunction with subsections 261.201(l)(1) and (3) of the Family Code; (2) must withhold the CHRI we have marked in the submitted documents under section 552.101 in conjunction with federal law and chapter 411 of the Government Code; (3) must withhold the information we have marked in the submitted documents, video recording 60244 in its entirety, and the portions of audio recording 606245 we indicate under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) must withhold the information you have marked, with the exception of the information we have marked for release, under section 552.130 of the Government Code. The department must release the remaining information.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;



Lindsay E. Hale
Assistant Attorney General
Open Records Division

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³We note the remaining information contains a social security number. 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). Additionally, we note this requestor has a right of access to the information being released. Accordingly, if the department receives another request for this same information from a person who does not have such a right of access, the department must again seek a ruling from this office.

Ref: ID# 452460

Enc. Submitted documents

c: Requestor
(w/o enclosures)