ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2012

Mr. Stephen Cumbie
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2012-10895

Dear Mr. Cumbie:

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# 458852 (City of Fort Worth PIR# W016573).

The City of Fort Worth (the "city") received a request for a specified report. 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. This exception encompasses information that other statutes make confidential such as section 261.201(a) of the Family Code, which provides in pertinent 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:
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> > (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.
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> . . .
>
> (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:
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> . . .
>
> (2) any information that is excepted from required disclosure under [the Act], or other law[.]
>
> (3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we agree the submitted information was used or developed by the city's police department in its investigation of alleged or suspected child abuse. *See id.* §§ 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), 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code). Accordingly, we conclude this information is within the scope of section 261.201. However, you state, and the submitted information reveals, that the requestor may be a parent, managing conservator, or other legal representative of the alleged child victim at issue. Furthermore, the requestor is not the individual alleged to have committed the abuse. Thus, if the requestor is not a parent, managing conservator, or other legal representative of the child victim, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the child victim's parent, managing conservator, or other legal representative, then the city may not

use section 261.201(a) to withhold this information from the requestor. *See id.* § 261.201(k). However, before the city provides any of the submitted information to the requestor, the city must redact the identity of the person who made the report. *See id.* § 261.201(l)(3). Accordingly, the city must withhold the identifying information of the reporting party, which we have marked, under section 552.101 in conjunction with section 261.201(l)(3) of the Family Code. We note the city also must redact any information that is otherwise excepted from required disclosure under the Act. *See id.* § 261.201(l)(2). Thus, we will address your remaining argument against disclosure of the submitted report.

Section 552.101 also encompasses the doctrine of 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered 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. However, as the parent, managing conservator or other legal representative of the minor with the privacy interest, the requestor would have a special right of access to information that would ordinarily be withheld to protect the minor's common-law privacy, and such information cannot be withheld from him on that basis. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Accordingly, if the requestor is the parent, managing conservator or other legal representative of the minor, the city may not withhold any of the information pursuant to section 552.101 on the basis of common-law privacy.

In summary, if the requestor is not a parent, managing conservator, or other legal representative of the child victim, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the child victim's parent, managing conservator, or other legal representative, then, with the exception of the information we have marked under section 261.201(l)(3) of the Family Code, the city must release the submitted information to the requestor pursuant to section 261.201(k) of the Family Code.[1]

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[1]We note the submitted information contains confidential information regarding the alleged child victim to which the requestor may have a right of access as the child's parent, managing conservator or other legal representative. *See* Fam. Code § 261.201(k). If the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office. *See* Gov't Code §§ 552.301(a), .302.

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,

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 458852

Enc. Submitted documents

c: Requestor
(w/o enclosures)