



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 11, 2012

Ms. Elizabeth S. Horn
Assistant City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2012-14413

Dear Ms. Horn:

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# 464974.

The City of Carrollton (the "city") received a request for all calls made within a specified period of time at a specified location. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.148 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it does not pertain to the location specified in the request. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release non-responsive information in response to the request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides:

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under chapter 552, Government 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). Upon review, we find the information we have marked was used or developed in investigations of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for the 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). You have not indicated the city has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses the common-law right of privacy. 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 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). This office has also 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) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978)*. The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *See Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, Evidence in Trials at Common Law, § 2374, at 767 (J. McNaughton rev. ed. 1961))*. The report must involve a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5*. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See Open Records Decision No. 549 at 5 (1990)*. We note individuals who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege. We also note the informer's privilege does not apply if the subject of the complaint knows the informer's identity. *See Open Records Decision No. 208 at 1-2 (1978)*.

We understand you to assert the remaining information identifies complainants who reported a possible violation of law to the city's police department. Upon review, we conclude the city may withhold the complainants' identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we note some of the remaining information at issue reflects the subject of the complaints know the identity of the complainants. Furthermore, you have not demonstrated how some of the remaining calls at issue concern violations of civil or criminal statutes. Thus, we find no portion of the remaining information identifies an informer for purposes of the informer's privilege. Therefore, none of the remaining information may be withheld on this basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review, we find the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.148 provides the following:

- (a) In this section, "minor" means a person younger than 18 years of age.
- (b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from the requirements of Section 552.021:

- (1) the name, age, home address, home telephone number, or social security number of the minor;
- (2) a photograph of the minor; and
- (3) the name of the minor's parent or legal guardian.

Id. § 552.148. Upon review, we find that none of the remaining submitted information is maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity. Accordingly, the city may not withhold any of the submitted information under section 552.148 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 464974

Enc. Submitted documents

c: Requestor
(w/o enclosures)