



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2012

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2012-18803

Dear Ms. Graham:

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# 471647.

The Mesquite Police Department (the "department") received two requests from different requestors for specified call sheets: the first was received on September 5, 2012 (the "first request"), and the second on September 7, 2012 (the "second request"). You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. 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 Code § 552.101. This section encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part as follows:

(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.

...

(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:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find Exhibit 3, which is only responsive to the first request, was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Thus, this information is within the scope of section 261.201(a). We note, however, the first requestor, who is not alleged to have committed the suspected abuse, may be a parent, managing conservator, or other legal representative of the child victim at issue. Thus, we must rule conditionally. If the first requestor is not a parent, managing conservator, or other legal representative of the child victim at issue, then the department must withhold Exhibit 3 from the first requestor in its entirety under section 552.101 in conjunction with section 261.201(a) of the Government Code. If the first requestor is a parent, managing conservator, or other legal representative of the child victim, then the department may not withhold this information from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(l)(2)

states any information that is excepted from required disclosure under the Act or other law must be redacted. *Id.* § 261.201(1)(2). Thus, if the first requestor is a parent, managing conservator, or other legal representative of the child victim at issue, then we must address your arguments under sections 552.101 and 552.130 to withhold the remaining information at issue in Exhibit 3. We will also address these arguments for the information at issue in Exhibit 4, which is only responsive to the second request.

Section 552.101 of the Government Code also encompasses Chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218 and 772.318 are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. You indicate the City of Mesquite is part of an emergency communication district established under section 772.118. You also represent the telephone numbers you have marked are the originating telephone numbers of 9-1-1 callers furnished to the department by a service supplier established in accordance with chapter 772 of the Health and Safety Code. Thus, we agree the department must withhold the information you have marked in Exhibit 3 under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code, to the extent it is not to be withheld under section 552.101 in conjunction with section 261.201 of the Family Code, as well as the information you have marked on this same ground in Exhibit 4.

Section 552.101 of the Government Code also encompasses common-law privacy, which 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 determined that certain other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We also have determined common-law privacy encompasses certain types of personal financial information. Personal financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction

between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

We agree the personal financial information you have marked is highly intimate or embarrassing and not a matter of legitimate public interest. Thus, we agree the department must generally withhold the personal financial information you have marked in Exhibit 3 under section 552.101 of the Government Code in conjunction with common-law privacy, to the extent it is not to be withheld under section 552.101 in conjunction with section 261.201 of the Family Code, as well as the information you have marked on this same ground in Exhibit 4.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). We agree the department must generally withhold the motor vehicle record information you have marked in Exhibit 3 under section 552.130, to the extent it is not to be withheld under section 552.101 in conjunction with section 261.201 of the Family Code, as well as the information you have marked on this same ground in Exhibit 4.

We note, however, the second requestor appears to be an agent of an insurance provider for one of the individuals (the "insured") whose personal financial and motor vehicle record information is at issue in Exhibit 4. As such, the second requestor, if acting as the insured's authorized representative, has a right of access to her personal financial and motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Thus, if the second requestor is an authorized representative of the insured at issue in Exhibit 4, then the department may not withhold from the second requestor her personal financial information under section 552.101 in conjunction with common-law privacy or her motor vehicle record information under section 552.130 but,

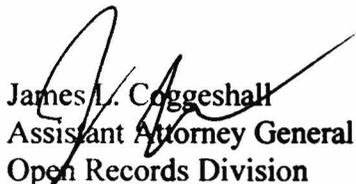
instead, must release this information to the second requestor pursuant to section 552.023.

To conclude, the department must withhold Exhibit 3 from the first requestor in its entirety under section 552.101 in conjunction with section 261.201(a) of the Government Code if the first requestor is not a parent, managing conservator, or other legal representative of the child victim at issue in that information. If the first requestor is a parent, managing conservator, or other legal representative of the child victim at issue, then the department must withhold the information you have marked in Exhibit 3 under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code and common-law privacy and under section 552.130 of the Government Code, but must release the remaining information in this exhibit to the first requestor. The department must withhold from the second requestor the information you have marked in Exhibit 4 under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code and common-law privacy and under section 552.130 of the Government Code, unless the requestor has a right of access to this information pursuant to section 552.023 of the Government Code, but must release the remaining information in this exhibit to the second requestor.

Finally, you ask this office to issue a previous determination that would permit the department to withhold motor vehicle registration information under section 552.130(a)(2) of the Government Code without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. Accordingly, 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 471647

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)