



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 13, 2012

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

OR2012-20066

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# 473645.

The Mesquite Police Department (the "department") received a request for a specified police report. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 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. Section 552.101 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 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 . . . 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; and

(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 in an investigation by the department of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault and aggravated sexual assault under Penal Code sections 22.011 and 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as person under 17 years of age). Thus, we find the submitted information is within the scope of section 261.201.

You inform us, and the submitted information reveals, the requestor is a parent of the child victim listed in the report and is not suspected of having committed the alleged abuse. Thus, as you acknowledge, the department may not use section 261.201(a) to withhold the submitted incident report from this requestor. Fam. Code § 261.201(k). Section 261.201(1)(3), however, provides the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Accordingly, the department must withhold the identifying information of the reporting party, which we have marked, under section 552.101 in conjunction with

section 261.201(1)(3).<sup>1</sup> The remaining information you seek to withhold does not identify the reporting party. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with section 261.201(1)(3). Additionally, section 261.201(1)(2) provides 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). Accordingly, we address your arguments under sections 552.101, 552.130, and 552.147 of the Government Code for a portion of the remaining information.

Section 552.101 of the Government Code also encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *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 privilege protects from disclosure 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. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's 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." 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 be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5.

You claim some of the remaining information you have marked is protected by the informer's privilege. However, upon review, we find none of the remaining information at issue reveals the identity of an informant. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license issued by an agency of this state or another state or country, is excepted from public release. Gov't Code § 552.130(a)(1). Therefore, the department must withhold the driver's license number you have marked under section 552.130.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147. The department may withhold the social security number you have marked under section 552.147.<sup>2</sup>

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<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its release.

<sup>2</sup>We note 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. *See* Gov't Code § 552.147(b).

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The department must also withhold the driver's license number you have marked under section 552.130 of the Government Code. The department may withhold the social security number you have marked under section 552.147 of the Government Code. The remaining information must be released.<sup>3</sup>

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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/tch

Ref: ID# 473645

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>Because the requestor has a right of access to information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.