



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 15, 2013

Mr. Habib H. Erkan, Jr.
Counsel for the City of Cibolo
Denton, Navarro, Rocha & Bernal, P.C.
2517 North Main Avenue
San Antonio, Texas 78212-4685

OR2013-00876

Dear Mr. Erkan:

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# 476058.

The City of Cibolo (the "city"), which you represent, received a request for two specified incident reports. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code.¹ 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 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:

¹Although you do not raise section 552.130 of the Government Code in your brief to this office, we understand you to raise this section based on your markings in the submitted information.

(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.

Fam. Code § 261.201(a), (k). You claim Exhibit D and portions of Exhibit E are confidential under section 261.201 of the Family Code. Upon review, we find that Exhibit D pertains to an investigation of alleged or suspected child abuse and is within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code 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). Therefore, Exhibit D is generally confidential under section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* We note that the requestor is the mother of the child victim listed in the report. However, the information at issue indicates the mother is the individual alleged to have committed the alleged or suspected abuse; thus, the requestor does not have a right of access under section 261.201(k). *See id.* § 261.201(k). Accordingly, the city must withhold Exhibit D in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² However, upon review we find you have failed to demonstrate how the information you have marked in Exhibit E was used or developed in an investigation under chapter 261 of the Family Code. Therefore, we conclude the city may not withhold the information

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

marked in Exhibit E under section 552.101 of the Government Code in conjunction with 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. 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. This office has also held common-law privacy protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Upon review, we find the information we have marked in Exhibit E is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with common-law privacy.

The remaining information contains driver's license numbers. 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 a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We note section 552.130 protects privacy interests. Because the requestor is the spouse of one of the individuals whose motor vehicle record information is at issue, she may have a right of access to her spouse's motor vehicle record information. *See id.* § 552.023. Thus, if the requestor is acting as the authorized representative of her spouse, then she has a right of access to her spouse's motor vehicle record information pursuant to section 552.023, and this information may not be withheld from her under section 552.130. If the requestor is not acting as the authorized representative of her spouse, then the city must withhold her spouse's motor vehicle record information, which we have marked, under section 552.130. The remaining motor vehicle record information we have marked pertains to an individual other than the requestor's spouse, and the city must withhold this information under section 552.130 of the Government Code.

In summary, the city must withhold Exhibit D in its entirety under section 552.101 of the Government Code in conjunction with 261.201 of the Family Code. The city must withhold the information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of her spouse, the city must withhold the information we have marked pertaining to the requestor's spouse under section 552.130 of the Government Code. The

city must withhold the remaining motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 476058

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.