



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 26, 2013

Mr. Jeffrey L. Moore  
Counsel for the City of Forney  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2013-03222

Dear Mr. Moore:

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# 479808.

The City of Forney (the "city"), which you represent, received a request for a specified incident report. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 exception encompasses information made confidential by other statutes, including section 261.201 of the Family Code. Section 261.201(a) provides 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.

Fam. Code § 261.201(a). You argue the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes sexual assault under Penal Code section 22.011). The information at issue consists of a report of sexual assault involving a victim who was seventeen years of age at the time of the offense. Although section 101.003(a) of the Family Code defines a “child” for purposes of section 261.201 as a “person under 18 years of age who is not and has not been married or who has not had the disabilities of minorities removed for general purposes,” *id.* § 101.003(a), we note section 22.011 of the Penal Code defines a “child” as “a person younger than seventeen years of age.” Penal Code § 22.011(c)(1). We find, when read together, section 261.001(1)(E) of the Family Code and section 22.011(c)(1) of the Penal Code prescribe sexual abuse of a child under chapter 261 requires the child be under the age of seventeen. Therefore, because the victim listed in the information at issue was seventeen years old at the time of the offense, we cannot conclude any of the information consists of information that was used or developed in an investigation of child abuse under chapter 261 of the Family Code. Therefore, the submitted information is not confidential under section 261.201 of the Family Code and may not be withheld from the requestor on that basis under section 552.101 of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted report pertains to a closed criminal investigation that ended in a result other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to the submitted information.

We note, however, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the

exception of the basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(2).

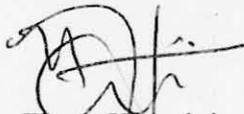
We note basic information includes an identification and description of the complainant and a detailed description of the offense. In this instance, the submitted information is related to an alleged sexual offense, and the complainant is also the alleged sexual assault victim. Section 552.101 of the 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). This office has concluded common-law privacy protects information that either identifies or tends to identify a victim of a sexual assault or other sex-related offense. *See Open Records Decision Nos. 393 (1983), 339 (1982)*. Therefore, in releasing basic information, the city must withhold the information we have marked that identifies the complainant under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, the city may withhold the requested information under section 552.108(a)(2) of the Government Code. In releasing the basic information, the city must withhold the victim's identifying information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Thana Hussaini  
Assistant Attorney General  
Open Records Division

TH/som

Ref: ID# 479808

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

