



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 2, 2013

Ms. Andrea Russell
Counsel for the City of Euless
Taylor Olson Adkins Sralla Elam, LLP
6000 Western Place, Suite 200
Forth Worth, Texas 76107

OR2013-05245

Dear Ms. Russell:

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# 482829.

The Euless Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 statute, including section 48.101 of the Human Resources Code. Section 48.101 is applicable to information relating to abuse, neglect, or exploitation of elderly and disabled persons in certain facilities and provides in part:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) a report of abuse, neglect, or exploitation made under [chapter 48 of the Human Resources Code];

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under [chapter 48 of the Human Resources Code] or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with [chapter 48 of the Human Resources Code] and as provided by [the Texas Department of Family and Protective Services (“DFPS”)] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a)-(b). You contend the submitted information is confidential under section 48.101. We note the only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are the DFPS and certain other state agencies, depending on the circumstances surrounding the incident.¹ *See id.* §§ 48.151, .152, .252, .301. Thus, section 48.101 is generally not applicable to records of an investigation conducted by a police department. In this instance, the submitted information was created by the department in connection with an investigation conducted by the department. You do not indicate that the DFPS was involved in the department’s investigation or that the submitted information was used in an investigation conducted under chapter 48 of the Human Resources Code. *See id.* § 48.101(a)(3). We therefore conclude the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 established. *Id.* at 681–82. The type of information considered highly 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 found 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 of legitimate public concern. Therefore, the department must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information is either not highly intimate or embarrassing

¹In 2005, the Department of Protective and Regulatory Services was renamed the Department of Family and Protective Services. *See* Act of May 29, 2005, 79th Leg., R.S., ch. 268, §§ 1.74, 1.75, 2005 Tex. Gen. Laws 621, 661.

or is of legitimate public interest. Accordingly, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. As no further exceptions to disclosure have been raised, the remaining information must be released.²

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 482829

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains the requestor's driver's license number which is generally confidential under section 552.130 of the Government Code. However, because section 552.130 protects personal privacy, the requestor has a right to her own information under section 552.023 of the Government Code. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. Gov't Code § 552.130(c). Thus, if the department receives another request for this same information from a person who does not have such a right of access, section 552.130(c) authorizes the department to redact this driver's license information.