



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 15, 2013

Mr. Daniel Plake  
Assistant County Attorney  
Open Records Division  
Montgomery County  
207 West Phillips Street, Suite 100  
Conroe, Texas 77301

OR2013-06063

Dear Mr. Plake:

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# 483998 (Montgomery County No. 2013-0479).

The County of Montgomery (the "county") received a request for incident reports for individuals living at certain addresses. You state the county does not have any responsive information pertaining to the address in Conroe County.<sup>1</sup> You state you will redact license plate numbers pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You claim the remaining requested 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant part:

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including a Texas license plate number under section 552.130(a)(2) of the Government Code, without the necessity of requesting a decision from this office.

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we find a portion of the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect 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), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). We note, however, the requestor is an attorney for the parent of the child victim listed in the submitted information and the parent

is not alleged to have committed the suspected abuse or neglect. Therefore, this information, which we have marked, may not be withheld from the requestor on this basis. *See id.* § 261.201(k). However, section 261.201(1)(3) states the identity of the reporting party must be withheld from disclosure. *Id.* § 261.201(1)(3). Thus, the county must withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. In addition, section 261.201(1)(2) states 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). Thus, we will address your argument under 552.101 for the information subject to section 261.201 as well as the remaining information.

The county claims portions of the remaining information are subject to the doctrine of common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy protects information that (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). 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 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). We find that the county would normally have to withhold some of the remaining information under common-law privacy. However, as the legal representative of a parent of the minor with the privacy interest, the requestor has a special right of access to information that would ordinarily be withheld to protect the minor's privacy, and such information cannot be withheld from her on that basis. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Accordingly, the county may not withhold any of the remaining information pursuant to section 552.101 on the basis of common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as chapter 772 of the Health and Safety Code. Chapter 772 authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 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; section 772.218 applies to an emergency communication district for a county with a population of more than 860,000; and section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

To the extent the county is part of an emergency communication district established under chapter 772 and the telephone numbers and addresses we have marked were furnished by a 9-1-1 service supplier, the marked information must be withheld under section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code. However, if the county is not part of an emergency communication district established under chapter 772, or if the telephone numbers and addresses we have marked were not furnished by a 9-1-1 service supplier, the county may not withhold the information under section 552.101 on this basis.

In summary, the county 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. To the extent the county is part of an emergency communication district established under chapter 772 and the telephone numbers and addresses we have marked were furnished by a 9-1-1 service supplier, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety 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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/dls

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<sup>3</sup> As previously noted, the requestor has a special right of access to the information being released. Accordingly, if the county receives another request for this information from a different requestor, then the county should again seek a decision from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)