



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 3, 2013

Ms. Teresa J. Brown  
Senior Open Records Assistant  
City of Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2013-07354

Dear Ms. Brown:

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# 486237 (Plano tracking #GOMR021213).

The Plano Police Department (the "department") received a request for information related to an "assault/arrest" in 1997 involving the requestor. You claim the 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. 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:

- (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). Upon review, we find report number 97-71901 consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for the purposes of this section as a 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, report number 97-71901 is confidential under section 261.201 of the Family Code.

In this instance, the requestor is a parent of the child victim listed in the report, but the requestor is also the individual listed as a suspect in the report. As such, the information at issue may not be provided to the requestor pursuant to section 261.201(k). *Id.* § 261.201(k) (stating a child’s parent may not obtain information that is subject to section 261.201(a) concerning reported abuse or neglect of the child if the parent is alleged to have committed the abuse or neglect). Accordingly, the department must withhold report number 97-71901 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, report number 97-71864 pertains to an alleged assault in which the victim was an adult. Upon review, we find you have not explained, and the report does not reflect, that report number 97-71864 was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established report number 97-71864 is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See* Fam. Code § 261.001 (1), (4); *see also id.* § 101.003(a). Accordingly, we find section 261.201 of the Family Code is not applicable to report number 97-71864, and the department may not withhold the report under section 552.101 of the Government Code on that basis.

We note some of the information in report number 97-71864 is private. Section 552.101 of the Government Code also encompasses the doctrine of 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). To

demonstrate the applicability of common-law privacy, both elements of this test must be satisfied. *Id.* at 681-82.

The type of information considered intimate and 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 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 is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked in report number 97-71864 under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold report number 97-71901 from public disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the information we have marked in report number 97-71864 under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information in report number 97-71864 must be released.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 486237

Enc. Submitted documents

c: Requestor  
(w/o enclosures)