



ATTORNEY GENERAL OF TEXAS
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June 20, 2013

Ms. Rebecca Hendricks Brewer
Counsel for the City of Frisco
Abernathy, Roeder, Boyd, & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2013-10383

Dear Ms. Brewer:

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# 491225.

The City of Frisco (the "city"), which you represent, received four requests from different requestors for specified information pertaining to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is either not responsive to the first three requests for information or is not responsive to any of the requests because it was created after the dates the requests were received. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). This decision does not address the public availability of the non-responsive information and that information need not be released in response to the present requests.

Next, we note some of the responsive information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The information at issue includes documents signed by a magistrate that are subject to section 552.022(a)(17). You seek to withhold this information, which we have marked, under section 552.101 of the Government Code. We note this section makes information confidential under the Act. However, while you raise section 552.101 in conjunction with common-law privacy for the magistrate-signed documents, information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Therefore, no portion of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. You also seek to withhold the magistrate-signed documents under section 552.107(2) of the Government Code. Section 552.107(2) allows a governmental body to withhold information if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). However, section 552.022(b) provides that a court may not order a governmental body to withhold from public inspection any category of information described by section (a) unless the category of information is expressly made confidential under the Act or other law. *Id.* § 552.022(b). Because section 552.022(b) prohibits a court from ordering the withholding of documents subject to section 552.022, we conclude the city may not withhold the magistrate-signed documents under section 552.107(2) of the Government Code. In addition, although you raise section 552.108 of the Government Code for the information at issue, this section is a discretionary exception that protects a governmental body's interests and does not make information confidential under the Act. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver)*. Therefore, the magistrate-signed documents may not be withheld under section 552.108 of the Government Code. However, we will address your arguments under section 552.101 in conjunction with sections 261.201 and 264.613 of the Family Code for this information. We will also consider your arguments against disclosure of the responsive information that is not subject to section 552.022(a)(17).

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:

(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.

Fam. Code § 261.201(a). Upon review, we find the responsive information was used or developed in an investigation of alleged or suspected child abuse conducted by the city's police department (the "department") under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes continuous sexual abuse of child under Penal Code section 21.02); *see also* Penal Code § 22.011(c)(1) (defining "child" for purposes of Penal Code section 21.02 as person under 17 years of age). Therefore, this information falls within the scope of section 261.201(a). You do not indicate the department has adopted a rule that governs the release of this information; therefore, we assume that no such regulation exists. Given that assumption, we conclude the city must withhold the responsive information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 491225

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)