



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 3, 2013

Ms. Michelle M. Kretz  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2013-11367

Dear Ms. Kretz:

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# 492163 (PIR No. W025248).

The City of Fort Worth (the "city") received a request for information pertaining to calls for service to the requestor's home on a specified date. We understand the city will redact the originating telephone numbers and addresses of 9-1-1 callers pursuant to Open Records Letter Nos. 2011-15641 (2011) and 2011-15956 (2011).<sup>1</sup> 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the

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<sup>1</sup>Open Records Letter Nos. 2011-15641 and 2011-15956 are previous determinations issued to the city authorizing the city to withhold the originating telephone numbers and addresses, respectively, of 9-1-1 callers furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, without requesting a decision from this office. See Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. 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 the test must be established. *Id.* at 681-82. The types 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. Although you assert the submitted information is confidential in its entirety pursuant to common-law privacy, we find this is not a situation where all of this information must be withheld to protect any individual's privacy interest. Upon review, however, we find portions of the submitted information are highly intimate or embarrassing and of no legitimate public interest. Accordingly, this information is subject to common-law privacy. However, the requestor is a parent of the minor child whose private information is at issue and, therefore, has a special right of access to information that would ordinarily be withheld to protect the minor's privacy interests. See Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). Therefore, the city may not withhold the information at issue from this requestor under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Section 261.201 of the Family Code 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.

(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). You argue the submitted information is confidential in its entirety under section 261.201. *See id.* §§ 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of this section 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). We note, however, that you have failed to demonstrate how the information was used or developed in an investigation under chapter 261. However, a portion of the submitted information, which we have marked, consists of a report of alleged abuse or neglect made under section 261.201(a)(1). *See id.* § 261.201(a)(1). Although the requestor is the parent of the child victim named in the report, he is also alleged to have committed the abuse or neglect. As such, the information at issue may not be provided to the requestor pursuant to section 261.201(k). *Id.* § 261.201(k). Accordingly, we conclude that the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup> *See* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor to section 261.201).

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must release the remaining information.<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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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

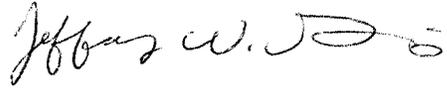
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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>3</sup>We note the requestor has a right of access to some of the information being released under section 552.023 of the Government Code. *See* Gov’t Code § 552.023. Therefore, if the city receives another request for this same information from a different requestor, it must again seek a ruling from this office.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey W. Giles". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

Jeffrey W. Giles  
Assistant Attorney General

Open Records Division

JWG/dls

Ref: ID# 492163

Enc. Submitted documents

c: Requestor  
(w/o enclosures)