



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2013

Mr. Steven E. Meyer
Assistant City Attorney
Legal Division
City of Arlington Police Department
P.O. Box 1065, Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2013-16542

Dear Mr. Meyer:

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# 500155 (Police Dept. Reference No. 11989).

The Arlington Police Department (the "department") received a request for all call logs, dispatch records, and incident reports involving the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention the department did not comply with section 552.301(b) of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request for information. *See id.* § 552.301(b). The requestor asserts the department received the request for information on June 28, 2013. You state the department received the request on July 1, 2013. The determination of the date the department received the request for information is a question of fact. This office cannot resolve factual disputes in the opinion process. *See Open Records Decision Nos.* 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue is not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See ORD* 552 at 4. Thus, we must accept the department's representation that it received the request for information on July 1, 2013. Accordingly, the tenth business day

was July 16, 2013. The department requested a ruling from this office on July 16, 2013. Therefore, we conclude the department complied with the requirements of section 552.301(b) of the Government Code.

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 made confidential by other statutes, such as section 261.201(a) of the Family Code, which 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.

Fam. Code § 261.201(a). You seek to withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Upon review, we find the information we have marked in Exhibit B was used or developed in the department’s investigations of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 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 disabilities of minority removed for general purposes), 261.001(1) (defining “abuse” for purposes of chapter 261 of Family Code); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of sexual assault under Penal Code section 22.011 as “a person younger than 17 years of age”). You do not indicate the department has adopted a rule that governs the release of the type of information at issue; therefore, we assume no such regulation exists. Given that assumption, we find the information we have marked in Exhibit B is confidential pursuant to section 261.201(a) of the Family Code and must be withheld in conjunction with section 552.101 of the Government Code on that basis.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we find you have failed to demonstrate how the remaining information in Exhibit B is a report of alleged or suspected child abuse or neglect or was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. Therefore, none of the remaining information in Exhibit B may be withheld under section 552.101 in conjunction with section 261.201(a).

¹As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the submitted information must be withheld in its entirety to protect the individual's privacy.

In this instance, although you claim the remaining information in Exhibit B is protected in its entirety by common-law privacy, you have not demonstrated, nor does it otherwise appear, this is a situation in which any of the information at issue must be withheld in its entirety on that basis. However, upon review, we find the information we have marked in Exhibit B satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the department must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. The department has failed to demonstrate, however, how any of the remaining information in Exhibit B is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the department may not withhold any of this information under section 552.101 in conjunction with common-law privacy.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us Exhibit C relates to an incident that has not received a final disposition by the appropriate court of law. We note Exhibit C pertains to a misdemeanor assault that occurred in 2009. The statute of limitations for misdemeanor assault is two years from the date of the offense. *See* Crim. Proc. Code art. 12.02(b) (complaint or information for Class C misdemeanor may be presented within two years from date of commission of offense, and not afterward); *see also* Penal Code § 22.01(c) (assault under Penal Code section 22.01(a)(3) is Class C misdemeanor). We note more than two years have elapsed since the events giving rise to the investigation at issue, and you have not informed this office any criminal charges were filed within the limitations period. Further, you have not otherwise demonstrated how the release of Exhibit C would interfere with the detection, investigation, or prosecution of a crime. Therefore, we find you have not demonstrated the

applicability of section 552.108(a)(1) of the Government Code to Exhibit C. Thus, the department may not withhold Exhibit C on that basis.

In summary, the department must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code and common-law privacy. The department must release the remaining information.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.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

Ref: ID# 500155

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains confidential information to which the requestor has a right of access as his client's authorized representative. See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Thus, if the department receives another request for this information from a different requestor, then the department must again seek a decision from this office.