



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2013

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2013-21123

Dear Ms. Graham:

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# 512435.

The Mesquite Police Department (the "department") received a request for information pertaining to a specified incident. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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 made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part 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.

(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[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Thus, this information is within the scope of section 261.201(a). We note, however, the requestor is a parent of the child victim. Therefore, the department may not withhold this information from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must be redacted. *Id.* § 261.201(l)(2). Thus, we will address your remaining arguments against disclosure of the submitted information.

Section 552.101 also encompasses section 560.003 of the Government Code, which provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless

individual consents to disclosure). Therefore, the department must withhold the fingerprint you have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses section 1703.306 of the Occupations Code. Section 1703.306 provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the person that requested the examination;

(3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. Upon review, we find some of the submitted information, which we have marked, consists of information acquired from a polygraph examination subject to section 1703.306. The requestor does not appear to fall into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the department must withhold the marked polygraph information under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 also encompasses 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 prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information you have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130(a)(1). Accordingly, the department must withhold the information you have marked under section 552.130 of the Government Code.¹

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). Therefore, the department may withhold the social security number you have marked under section 552.147(a).²

In summary, in conjunction with section 552.101 of the Government Code, the department must withhold: (1) the fingerprint you have marked under section 560.003 of the Government Code, (2) the information we have marked section 1703.306 of the Occupations Code, and (3) the information you have marked under common-law privacy. The department must also withhold the information you have marked under section 552.130 of the Government Code. The department may withhold the social security number you have marked under section 552.147 of the Government Code. The department must release the remaining information.³

¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

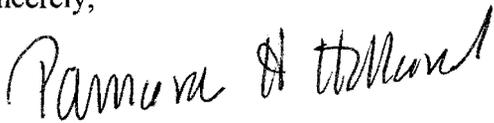
²We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Gov't Code* § 552.147(b).

³Because this requestor has a special right of access to the information being released, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office. *See Family Code* § 261.201(k).

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,

A handwritten signature in black ink that reads "Tamara H. Holland". The signature is written in a cursive, flowing style.

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/tch

Ref: ID# 512435

Enc. Submitted documents

c: Requestor
(w/o enclosures)