



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2013

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2013-21910

Dear Mr. Mann:

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# 508977.

The City of Garland Police Department (the "department") received a request for records related to a specified arrest. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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. Thus, this exception applies to information made confidential by statute. You raise section 261.201 of the Family Code, which provides in pertinent 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.

Fam. Code § 261.201(a). You assert report number 2013R004865 and its supporting documentation are part of the reports, records, communications, and working papers used or developed in an investigation conducted and subject to chapter 261 of the Family Code. After review of the submitted information and consideration of your arguments, we find the information you marked and the additional information we marked consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also 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 the disabilities of minority removed for general purposes). Consequently, the department must withhold the marked information based on section 552.101 in conjunction with section 261.201(a). The remaining information is not confidential under section 261.201(a), and the department may not withhold it under section 552.101 in conjunction with section 261.201(a).

Section 552.101 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. 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).

Upon review, we find, with the exception of the information we have marked for release, the information you marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We have also marked additional information that satisfies the *Industrial Foundation* standard. Accordingly, with the exception of the information we have marked for release, the department must withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department may not withhold the remaining information based on section 552.101 in conjunction with the common-law right to privacy.

The department seeks to withhold portions of the remaining information it has marked based on section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) exempts 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.” See Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See *id.* §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue relates to an ongoing investigation of alleged criminal offenses. You also state at least one of the criminal charges has been filed as a result of the investigation. Based upon these representations, we conclude the department has established the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, after review, we conclude the department may withhold the information you marked based on section 552.108(a)(1).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. See Gov’t Code § 552.130. Accordingly, the department must withhold the driver’s license numbers you marked and the additional information we marked under section 552.130 of the Government Code.

In summary, the department must withhold under section 552.101 the information you marked and the additional information we marked as confidential under section 261.201(a) of the Family Code. With the exception of the information we marked for release, the department must withhold the information you marked, as well as the information we marked, based on section 552.101 in conjunction with the common-law right to privacy. The department may withhold the information you marked under section 552.108(a)(1) of the Government Code and must withhold the information you marked, and the additional information we marked, under section 552.130 of the Government Code. The department must release the remaining information.

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 cursive script, appearing to read "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KH/sdk

Ref: ID# 508977

Enc. Submitted documents

c: Requestor
(w/o enclosures)