



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 27, 2014

Ms. J. Diaz  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar Street  
Dallas, Texas 75215

OR2014-11038

Dear Ms. Diaz:

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# 527230 (DPD ORR# 2014-391).

The Dallas Police Department (the "department") received a request from an investigator with the Office of the Chief Disciplinary Counsel of the State Bar of Texas for any offense reports where a named individual was the complainant. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note you have redacted a date of birth from the submitted documents. You do not assert, nor does our review of our records indicate, the department has been authorized to withhold any such information without seeking a ruling from this office. *See Gov't Code* § 552.301(a); *Open Records Decision No. 673 (2000)*. Because we can discern the nature of the information that has been redacted, being deprived of it does not inhibit our ability to

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

make a ruling in this instance. Nevertheless, be advised a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"), 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

[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 the requested information is confidential under section 261.201. However, for purposes of section 261.201, a "child" is defined as a person under eighteen years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes. *Id.* § 101.003(a). The victim at issue in both of the submitted incident reports is not under eighteen years of age. Thus, you have failed to demonstrate the submitted information pertains to a report or investigation of alleged or suspected child abuse or neglect made for the purposes of chapter 261. Therefore, the submitted information is not confidential under section 261.201 of the Family Code and the department may not withhold it under section 552.101 on that ground.

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. 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

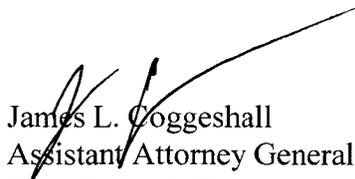
information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

Generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The requestor knows the identity of the alleged victim in one of the submitted reports, which we have marked. Thus, withholding only the identifying information in this report from the requestor would not preserve the victim's common-law right to privacy. Therefore, we conclude the department must withhold this marked report in its entirety pursuant to the common-law privacy principles incorporated by section 552.101 of the Government Code. Some of the information in the remaining report satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must also withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information, including the information you have redacted.

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

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 527230

Enc. Submitted documents

c: Requestor  
(w/o enclosures)