



October 4, 1999

Mr. Tommy W. Lueders, II  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR99-2812

Dear Mr. Lueders:

You have asked 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# 127724.

The City of Midland (the "city") received a request for two incident reports, identified as numbers 99-0603695 and 99-0603803. In response to the requests, you submit to this office for review the information at issue. It appears that one of the reports has been released to the requestor.<sup>1</sup> You contend, however, that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with common-law privacy and section 261.201 of the Family Code. We have considered your arguments and claimed exception, and reviewed the submitted information.

Based on the city's brief to this office and the requestor's request, it appears that the city did not seek an open records decision from this office within the statutory ten *business* day deadline. See Gov't Code § 552.301. The city's delay in this matter results in the presumption that the requested information is public. See *id.* § 552.302; *Hancock v. State Bd.*

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<sup>1</sup>You state that "incident report numbered 990603584 has been released to the requestor," however, "[t]he first report, 99060685, is the information which the City is concerned with releasing." We assume the references to these numbers is merely a typographical error, since the numbers you cite in your letter do not match the requestor's numbers. Accordingly, based on the context of your letter and since you have sent one of the responsive documents, we assume the remaining report has been released based on your letter.

*of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 provides such a compelling reason. See Gov't Code § 552.352 (distribution of confidential information is criminal offense).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section also encompasses common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and 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. 540 S.W.2d at 683. After reviewing the document at issue, we agree that a portion of the information, which we have marked, must be withheld from the public under section 552.101 in conjunction with privacy.

In your brief to this office, you also assert that "[t]hough the requested information is does [sic] not mention details of the alleged incident, it is arguable that the incident history does contain a report of suspected abuse under 261.201 of the Family Code."<sup>2</sup> However, based on a review of the submitted record, it does not appear that section 261.201 is applicable to the submitted records.

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<sup>2</sup>Section 261.201 of the Family Code reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Sam Haddad". The signature is written in black ink and is positioned above the typed name.

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID# 127724

Encl. Submitted documents

cc: Ms. Gail McGee  
6204 Fernwood Drive  
Arlington, Texas 76001  
(w/o enclosures)