



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2003

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P. O. Box 469002
Garland, Texas 75046-2000

OR2003-5771

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186101.

The Garland Police Department (the "department") received a request for a specific offense report on a named individual and all records of 9-1-1 calls and all police reports related to a specified address from July 2002 through January 2003. You state that you have released some information to the requestor. You claim that other requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that a portion of the information you have submitted to us for review is the identical information that was the subject of a previous ruling from this office. In Open Records Letter No. 2003-1046 (2003), we concluded that portions of the submitted information were excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. We understand you to represent that the circumstances existing at the time of the issuance of this ruling have not changed and that, consequently, the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2003) have been met in this situation. Therefore, in reliance on that representation, we conclude that the department must withhold the submitted information previously excepted from disclosure under sections 552.101 and 552.130 in accordance with Open Records Letter

No. 2003-1046 (2003).¹ See Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).

We now address your arguments for the remaining 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,” and encompasses the doctrine of common-law privacy. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). 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. *Id.* at 683. After reviewing the submitted information in Exhibit I.A, we find it contains such highly intimate or embarrassing information that is not of legitimate concern to the public. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also protects information made confidential by other statutes. Section 261.201(a) of the Family Code provides:

(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, and working papers used or developed in

¹The four criteria for this type of “previous determination” are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general’s prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

an investigation under this chapter or in providing services as a result of an investigation.

We have reviewed the submitted information in Exhibit I.B and find that it constitutes files, records, communications, and working papers used or developed by the department in an investigation made under chapter 261 of the Family Code. You do not inform us that the department has adopted a rule that governs the release of this type of information. We therefore assume that no such rule exists. Given this assumption, we conclude that the submitted information in Exhibit I.B is confidential under section 261.201 of the Family Code and must be withheld in its entirety pursuant to section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). As we are able to make this determination, we need not address your remaining argument.

To summarize, we conclude: (1) the department must withhold the submitted information previously excepted from disclosure under sections 552.101 and 552.130 in accordance with Open Records Letter No. 2003-1046 (2003), (2) the department must withhold the information we have marked in exhibit I.A under section 552.101 of the Government Code in conjunction with common-law privacy, and (3) the department must withhold the information in Exhibit I.B in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 186101

Enc. Submitted documents

c: Ms. Gloria McCartney
1311 Bluebird
Garland, Texas 75042
(w/o enclosures)