



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2005

Ms. Meredith Ladd
Brown & Hoffmeister
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2005-02295

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 220342.

The City of McKinney (the "city"), which you represent, received a request for copies of police reports regarding three named individuals and two specified dates. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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." Section 552.101 encompasses the doctrine of 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. The submitted documents contain information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. We have marked the information that the city must withhold under common law privacy and section 552.101 of the Government Code.

The city asks this office to determine whether the requestor, as the legal guardian of one of the individuals to whom the information pertains, has a special right of access to the information at issue. Section 552.023 of the Government Code provides a person or a person's representative with a special right of access, beyond that of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests. Gov't Code § 552.023(a); *see also* Gov't Code § 552.023(b); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). In the instant case, the requestor is a case manager with Lutheran Social Services of the South, which has been appointed by the court as the sole managing conservator of the named individual to whom the requested information pertains. Generally, the requestor would have a special right of access to this information as the individual's representative. However, the individual at issue is no longer a child for purposes of the sole managing conservatorship. *See* Fam. Code § 101.003 (defining "child" as a person under 18 years of age). Because the individual is now an adult, the requestor no longer has a special right of access to this information.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code and common law privacy. The remaining information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/sdk

Ref: ID# 220342

Enc. Submitted documents

c: Mr. Shawn Wilson
Case Manager
Lutheran Social Services of the South
3001 LBJ Freeway #107
Dallas, Texas 75234-7756
(w/o enclosures)