



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 6, 2006

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

OR2006-02198

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# 243531.

The Garland Police Department (the "department") received a request for a specified police report regarding the requestor's arrest on December 2, 2005. You claim that the requested 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that another statute makes confidential. Section 261.201(a) of the Family Code provides 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, 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). Upon review, we determine that incident report number 2005R034752 consists of documents used or developed in an investigation of alleged or suspected child abuse. *See* Fam. Code § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *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). Thus, we find that incident report number 2005R034752 is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we conclude that incident report number 2005R034752 is excepted from disclosure in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law. However, we find that the remaining submitted information, incident report number 2005R034745, pertains to an investigation of aggravated assault with a deadly weapon and was not used or developed in an investigation under chapter 261 of the Family Code. Therefore, we conclude incident report number 2005R034745 may not be withheld under section 552.101 on this basis.

You also raise section 552.108 for the submitted information. Section 552.108 of the Government Code excepts 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.” 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* Gov’t Code §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that incident report number 2005R034745 relates to a pending criminal investigation. Based on your representations and our review, we determine that the release of the information you have outlined in red in incident report number 2005R034745 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), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). We therefore conclude the department may withhold the information you have outlined in red in incident report number 2005R034745 pursuant to section 552.108(a)(1) of the Government Code.<sup>1</sup>

We note, however, that portions of the remaining submitted information are protected under section 552.101 in conjunction with the doctrine of common law privacy. Section 552.101

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument for this information.

encompasses the common law right to privacy. For information to be protected under common law privacy, the information must meet the criteria set out in *Industrial Foundation. Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* 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. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have marked portions of the remaining submitted information that must be withheld by the department under section 552.101 in conjunction with common law privacy.

In summary, the department must withhold incident report number 2005R034752 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department may withhold the information it has outlined in red in incident report number 2005R034745 pursuant to section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.101 in conjunction with common law privacy. The remaining information must be released.<sup>2</sup>

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

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<sup>2</sup>We note that the information being released contain Texas motor vehicle record information that is confidential with respect to the general public. However, the requestor has a special right of access to this information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). If the department receives a future request for this information from an individual other than the requestor or her agent, the department should again seek our decision.

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); *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 Office of the Attorney General 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. 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,



Lisa V. Cubriel  
Assistant Attorney General  
Open Records Division

LVC/segh

Mr. Mark G. Mann - Page 5

Ref: ID# 243531

Enc: Submitted documents

c: Ms. Jennifer Dawson  
909 Brand #191  
Garland, Texas 75040  
(w/o enclosures)