



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2007

Ms. Rebecca H. Brewer
Abernathy, Roeder, Boyd & Joplin, PC
P.O. Box 1210
McKinney, Texas 75070-1210

OR2007-15894

Dear Ms. Brewer:

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# 296247.

The City of Frisco (the "city"), which you represent, received a request for information pertaining to two specified incidents. You claim that the requested 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." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. 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, 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). Report number 07072272 was created during an investigation of alleged neglectful supervision. Thus, we find that report number 07072272 is encompassed by chapter 261 of the Family Code. You have not indicated that the city has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, report number 07072272 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold report number 07072272 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

However, we find that report number 07072391 does not consist of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code. Consequently, report number 07072391 does not fall within the scope of section 261.201(a), and it may not be withheld on this basis.

Section 552.101 of the Government Code also 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. *Id.* 540 S.W.2d at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of the incident, the entire report must be withheld to protect the individual's privacy. In this instance, the submitted documents reveal that the requestor knows the identity of the individual involved as well as the nature of the information in report number 07072391. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold report number 07072391 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

¹We note that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, a parent or guardian of the child may have the statutory right to review that file. *See* Fam. Code § 261.201(g).

We note, however, that the requestor is the spouse of the individual at issue; therefore, if the requestor is the authorized representative of this individual, then the requestor has a right of access to report number 07072391 pursuant to section 552.023 of the Government Code, and the city must release this information to him. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). If the requestor does not have a right of access to this information pursuant to section 552.023, then the city must withhold report number 07072391 under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold report number 07072272 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Unless the requestor is the authorized representative of the individual at issue, the city must withhold report number 07072391 under section 552.101 of the Government Code in conjunction with common-law privacy.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

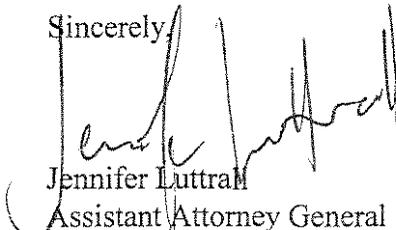
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental

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,



Jennifer Luttram
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 296247

Enc. Submitted documents

c: Mr. Steve Upp
10237 Woodbury Drive
Frisco, Texas 75034
(w/o enclosures)