



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2009

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

OR2009-13757

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# 356749.

The Garland Police Department (the "department") received a request for a specified incident report. You claim 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." Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code. Section 261.201(a) provides as follows:

(a) Except as provided by Section 261.203, 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.

Act of April 10, 1995, 74th Leg., R.S., ch. 20, § 1, sec. 261.201, 1995 Tex. Gen. Laws 113, 262, *amended by* Act of June 1, 2009, 81st Leg., R.S., ch. 779, §1, 2009 Tex. Sess. Law Serv. 1965, 1965–66 (Vernon) (to be codified as an amendment to Fam. Code § 261.201).

You state the submitted information relates to an investigation of alleged abandonment of a child with intent to return and that Child Protective Services (“CPS”) was notified of the investigation. Thus, you state the submitted information is excepted from disclosure under section 261.201. Although CPS was notified, the department has not explained the submitted information was used by CPS in an investigation conducted under chapter 261. Consequently, we find you have failed to adequately demonstrate how this information was used or developed in an investigation under chapter 261 of the Family Code. *See* Fam. Code § 261.001(4)(A) (definition of “neglect” for purposes of chapter 261 of the Family Code does not include abandoning child with intent to return). We therefore conclude section 261.201 is not applicable to the submitted information. Accordingly, the department may not withhold any of the submitted information under section 552.101 on that basis.

We also understand you to claim the submitted information is confidential under common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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.* at 683. Upon review, we find you have failed to demonstrate how any of the submitted information constitutes highly intimate or embarrassing information that is of no legitimate concern to the public. Thus, none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy. As you make no further arguments against disclosure, the submitted information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'KES', followed by a circular flourish or stamp.

Karen E. Stack
Assistant Attorney General
Open Records Division

KES/jb

Ref: ID# 356749

Enc. Submitted documents

c: Requestor
(w/o enclosures)