



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2009

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

OR2009-15134

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# 359145 (GCA 09-0615).

The Garland Police Department (the "department") received a request for all police dispatch reports for two addresses over a specified range of dates. You state that the department does not maintain any information related to one of the specified addresses.¹ You also state that the department has released some responsive information to the requestor. You claim that the submitted 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.

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 made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent

¹We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)–(l). You claim that some of the submitted information is confidential under section 261.201. Upon review, we find that the information we have marked under section 261.201 consists of reports of alleged or suspected child abuse or neglect made under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201); *id.* § 101.003(a) (defining “child” as a person under

eighteen years of age who is not and has not been married and who has not had the disabilities of minority removed for general purposes). However, we find that you have failed to demonstrate that the remaining reports for which you raise section 261.201 are reports of alleged or suspected child abuse or neglect made under chapter 261, or are files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under chapter 261. Accordingly, the department may not withhold these reports under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

We note that the requestor is the parent of the alleged victims of abuse or neglect in the reports that are subject to section 261.201. Therefore, pursuant to section 261.201(k), the requestor has a right of access to these reports that would otherwise be confidential under section 261.201(a), provided that he is not the person alleged to have committed the abuse or neglect. *See id.* § 261.201(k). One of the reports subject to section 261.201 involves abuse or neglect allegations against the requestor; thus, the requestor does not have a right of access to this report, which we have marked, under section 261.201(k), and the department must withhold the report from him under section 552.101 in conjunction with section 261.201(a). Some of the remaining reports subject to section 261.201 involve allegations of abuse or neglect committed by a person other than the requestor. Accordingly, the department may not use section 261.201(a) to withhold those reports, which we have marked, from this requestor. *See id.* However, we note that section 261.201(l)(3) states that the identity of the reporting party must be withheld when a governmental body releases information under section 261.201(k); therefore, the department must withhold the information we have marked under section 552.101 in conjunction with section 261.201(l)(3). *Id.* § 261.201(l)(3). We further note that section 261.201(l)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will address your remaining arguments against disclosure for the reports subject to section 261.201(k), as well as the remainder of the submitted information.

Section 552.101 also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The types of information considered intimate or 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. *See id.* at 683. Upon review, we agree that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information you have marked on this basis is either not highly intimate or embarrassing or is of legitimate public

concern. Thus, the department may not withhold any of the remaining information at issue under section 552.101 in conjunction with common-law privacy

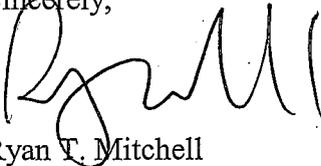
Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the information you have marked pursuant to section 552.130.

In summary, the department must withhold the information that: (1) we have marked pursuant to section 552.101 of the Government Code in conjunction with sections 261.201(a) and 261.201(l)(3) of the Family Code; (2) we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy; and (3) you have marked under section 552.130 of the Government Code. The department must release the remainder of the submitted information.²

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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/dls

²We note that the information to be released contains information that would be confidential with regard to the general public, but to which the requestor has a right of access under section 552.023 of the Government Code and section 261.201(k) of the Family Code. Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right 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). Should the department receive another request for this information from someone other than the requestor or his authorized representative, the department should again seek a decision from this office.

Ref: ID# 359145

Enc. Submitted documents

c: Requestor
(w/o enclosures)