



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2011

Mr. Mack Reinwand
Assistant City Attorney
Arlington Police Department
P. O. Box 1065
Arlington, Texas 76004-1065

OR2011-00136

Dear Mr. Reinwand:

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# 404868 (Arlington Police Department Reference No. 2234-101410).

The Arlington Police Department (the "department") received a request for information pertaining to a specified address. 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.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the request was received. The department need not release nonresponsive information in response to this request, and this ruling will not address that 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 protected by other statutes, such as section 261.201(a) of the Family Code, which provides as follows:

(a) [T]he 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). We note the information we have marked consists of files, reports, records, communications, audiotapes, video tapes, or working papers used or developed in an investigation of alleged child abuse or neglect under chapter 261. Accordingly, the marked information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). 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, the information we have marked is confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code as information made confidential by law.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). We note some of the remaining information consists of a report of an alleged sexual assault. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when the requestor knows the identity of the alleged sexual assault victim. *See* ORD 393. Although you seek to withhold the report of alleged sexual assault in its entirety, you have not demonstrated, nor does the information reflect, that the requestor knows the identity of the alleged sexual assault victim. Thus, the department may not withhold the entire report of alleged sexual assault under section 552.101 in conjunction with common-law privacy. However, the department must withhold the alleged sexual assault victim’s identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. You also seek to withhold the remaining information in its entirety. However, we find the department has failed to demonstrate how the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

We note portions of the remaining information are subject to section 552.130 of the Government Code.¹ Section 552.130 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 [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.²

In summary, department must withhold the information we have marked under: (1) section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; (2) section 552.101 in conjunction with common-law privacy; and (3) section 552.130 of the Government Code. The remaining information must be released.³

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,


Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number and Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Ref: ID# 404868

Enc. Submitted documents

c: Requestor
(w/o enclosures)