



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2011

Ms. Lisa D. Mares
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2011-02591

Dear Ms. Mares:

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# 409721.

The Southlake Department of Public Safety (the "department"), which you represent, received a request for a specified police report. You state you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ In addition, you state you will redact Texas driver's license numbers and license plate numbers under section 552.130 of the Government Code pursuant to the previous determination issued in Open Records Decision No. 684 (2009).² You claim that the submitted information is exempted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹Section 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. Gov't Code § 552.147(b).

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

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, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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). You assert the submitted information is made confidential by section 261.201. However, upon review, we find that the submitted report does not pertain to an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1)(4) (defining “abuse” & “neglect” for purposes of Fam. Code ch. 261). Accordingly, we conclude the submitted information is not confidential under section 261.201 of the Family Code and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state the submitted information concerns a closed criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) is applicable to the submitted information.

However, as you acknowledge, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Id.* § 552.108(c). Basic information refers to the information held to be public in *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. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2).

We understand you to raise section 552.101 of the Government code in conjunction with common-law privacy for the basic 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. *Id.* at 681-82. The types 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. *See id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that portions of the basic information are highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find the remaining basic information either is not intimate or embarrassing or is of legitimate public interest. Therefore, none of the remaining basic information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. However, in releasing the basic information, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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 'Vanessa Burgess', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 409721

Enc. Submitted documents

c: Requestor
(w/o enclosures)