



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2013

Ms. Rachel L. Lindsay
Counsel for the Town of Flower Mound
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2013-01475

Dear Ms. Lindsay:

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# 477531.

The Flower Mound Police Department (the "department"), which you represent, received a request for all reports pertaining to a specified address. You state you have released some of the requested information. You claim the submitted information is excepted 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.

Initially, we note you have redacted telephone numbers from the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does a review of our records indicate, the department is authorized to withhold the information it has redacted without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). Therefore, this information must be submitted in a manner that enables this office to determine whether it falls within the scope of an exception to disclosure. Because we can discern the nature of the redacted information, being deprived of the information does not inhibit our ability to make a ruling. Nonetheless, in the future, the department must not

redact information from the information it submits to this office in seeking an open records ruling, unless the department is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. *See Gov't Code § 552.301(e)(1)(D)*. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 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 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 [Texas Department of Family and Protective Services] 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[.]

Fam. Code § 261.201(a), (k), (l)(1). We find the information in Exhibits D and E was used or developed in investigations of alleged child abuse or neglect under chapter 261. *See id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). You explain, and the submitted information reflects, the requestor’s client is a parent of one of the child victims listed in some of the reports in Exhibit D. However, we note the requestor’s client is not a parent, managing conservator, or other legal representative of the only child victim listed in one of the reports in Exhibit D or the only child victim listed in the report in Exhibit E. Accordingly, the department must withhold these reports, which we have marked, in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

As previously noted, the requestor’s client is the parent of a child victim listed in the remaining reports in Exhibit D. Furthermore, the requestor’s client is not the individual alleged to have committed the suspected abuse. *See Fam. Code § 261.201(k).* Thus, the department may not withhold these reports, in which the requestor’s client’s child is listed as a victim, from this requestor on the basis of section 261.201(a). *Id.* However, before the department provides any of this information to the requestor, the department must redact any personally identifying information about a child victim or witness who is not the requestor’s client’s child. *See id.* § 261.201(l)(1). Accordingly, the department must withhold the identifying information we have marked in the remaining reports in Exhibit D under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov’t Code § 552.108(a)(2).* A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You explain Exhibit C pertains to criminal investigations that did not result in convictions or deferred adjudications. Based on your representations and our review, we find that section 552.108(a)(2) is applicable to Exhibit C.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See *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). See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold Exhibit C under section 552.108(a)(2) of the Government Code.

You assert Exhibit B is protected by common-law privacy, which is encompassed by section 552.101 of the Government Code. Common-law privacy protects information if it (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). To demonstrate the applicability of common-law privacy, both elements of this test must be met. *Id.* at 681-82.

Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). We find some of the information in Exhibit B is subject to common-law privacy. However the requestor is the representative of the parent of the minor with the privacy interest and, thus, has a special right of access to information that would ordinarily be withheld to protect the child's common-law privacy interests. See Gov't Code § 552.023(a) (person or a person's authorized representative has special right of access, beyond the right of general public, to information held by a governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Furthermore, we find none of the information in Exhibit B that does not pertain to the requestor's client's child is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining information in Exhibit B may be withheld 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 title or registration issued by an agency of this state or another state or country.¹ Gov't Code § 552.130(a)(2). Upon review, we find the department must withhold the motor vehicle record information we have marked in Exhibit B under section 552.130 of the Government Code.

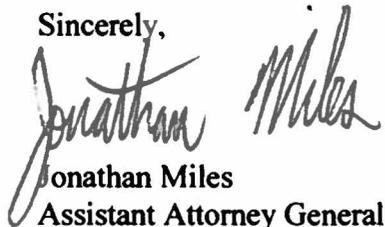
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481, 480 (1987), 470 (1987).

In summary, the department must withhold the report we have marked in Exhibit D and Exhibit E under 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In releasing the remaining reports in Exhibit D, the department must withhold the identifying information of child victims and witnesses we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code. With the exception of basic information, the department may withhold Exhibit C under section 552.108(a)(2) of the Government Code. The department must withhold the motor vehicle record information we have marked in Exhibit B under section 552.130 of the Government Code. The remaining information must be released.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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 477531

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a right of access to some of the information being released in this instance. Therefore, if the department receives another request for this information from an individual other than the requestor or his client, the department must again seek a decision from this office.