



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 10, 2013

Mr. William P. Chesser  
City Attorney  
City of Brownwood  
P.O. Box 1389  
Brownwood, Texas 76804

OR2013-11760

Dear Mr. Chesser:

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# 492623.

The City of Brownwood (the "city") received a request for all police call sheets concerning a specified location during a certain period. You state the city has released some of the information. 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(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the 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). Upon review, we find the information submitted as Exhibit 3 was used or developed in an investigation of alleged child abuse or child neglect. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). You have not indicated the city’s police department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information submitted as Exhibit 3 is confidential under section 261.201 of the Family Code and the city must withhold it under section 552.101 of the Government Code.

Section 552.101 of the Government Code 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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. *Id.* at 683. Upon review, we find the information we marked in Exhibit 2 is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information in Exhibit 2 is not highly intimate or embarrassing and the city may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. The constitutional right to privacy protects two types of interests. *See Open Records Decision No. 600 at 4* (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). The first is the interest in independence in making certain important decisions related to the “zones of privacy” recognized by the United States Supreme Court. *Id.* The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating

constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than under the common-law right to privacy; the material must concern the "most intimate aspects of human affairs." *See id.* at 5 (citing *Ramie*, 765 F.2d at 492). Upon review, we find you have not demonstrated the applicability of constitutional privacy to the remaining information in Exhibit 2. Accordingly, the city may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country.<sup>1</sup> Gov't Code § 552.130(a)(1). Accordingly, the city must withhold the information we marked in Exhibit 2 under section 552.130 of the Government Code.<sup>2</sup>

In summary, the city must withhold the information submitted as Exhibit 3 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the information we marked in Exhibit 2 under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we marked in Exhibit 2 under section 552.130 of the Government Code. The remaining 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

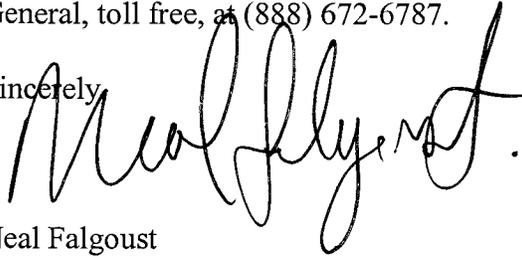
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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a period at the end.

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 492623

Enc. Submitted documents

c: Requestor  
(w/o enclosures)