



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2013

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2013-16843

Dear Ms. Graham:

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# 501074.

The City of Mesquite (the "city") received a request for specified information pertaining to a specified incident. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 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 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;

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law[.]

Fam. Code § 261.201(a), (k), (l)(1)-(2). Upon review, we find the submitted information was used or developed by the city's police department (the "department") in its investigation of alleged or suspected child abuse. *See id.* §§ 101.003(a) (defining "child" as person under eighteen years of age who is not and has not been married and who has not had disabilities of minority removed for general purposes), 261.001(1) (defining "abuse" for purposes of chapter 261 of Family Code). Thus, we find this information is within the scope of section 261.201(a). We note, however, the requestor is a parent of the alleged child victim at issue. Furthermore, the requestor is not accused of committing the alleged or suspected child abuse. Therefore, the city may not withhold the submitted information from the requestor on the basis of section 261.201(a) of the Family Code. *See id.* § 261.201(k).

However, before the city provides any of this information to the requestor, the city must redact any personally identifying information about any other child victims or witnesses. *See id.* § 261.201(l)(1). Accordingly, the city must withhold the identifying information of the witnesses we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. In addition, the city must redact any information that is otherwise excepted from required disclosure under the Act. *See id.* § 261.201(l)(2). Because you raise sections 552.101, 552.130, and 552.147 of the Government Code for portions of the remaining information, we will consider the applicability of these section to this 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 the doctrine of common-law privacy, which 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 prongs of this test must be established. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *See id.* at 683. Upon review, we find the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, this information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130(a)(1)-(2). Accordingly, the city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.¹

Section 552.147(a) of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). Therefore, the city may withhold the social security numbers you have marked under section 552.147(a) of the Government Code.²

¹We 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 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).

²We note 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. *See* Gov’t Code § 552.147(b).

In summary, the city must withhold the identifying information of the witnesses we have marked under section 552.101 of the Government Code in conjunction with section 261.201(i)(1) of the Family Code. The city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.130 of the Government Code. The city may withhold the social security numbers you have marked under section 552.147(a) of the Government Code. The city must release the remaining information to this requestor.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.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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 501074

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a special right of access to the information being released in this instance. See Fam. Code § 261.201(k). Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.