



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 21, 2014

Ms. Michele Freeland  
Legal Assistant  
Office of General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2014-04809

Dear Ms. Freeland:

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# 516346 (PIR# 13-4875).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified investigation. 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. This section encompasses information other statutes make confidential. Section 411.00755 of the Government Code states in pertinent part:

(b) The personnel records of a commissioned officer of the department may not be disclosed or otherwise made available to the public, except the department shall release in accordance with Chapter 552:

(1) any letter, memorandum, or document relating to:

...

(B) misconduct by the officer, if the letter, memorandum, or document resulted in disciplinary action[.]

*Id.* § 411.00755(b). Section 411.00755 defines a personnel record, in part, as “any letter memorandum, or document maintained by the department that relates to a commissioned officer of the department[.]” *Id.* § 411.00755(a). For the purpose of section 411.00755, “disciplinary action” means discharge, suspension, or demotion. *Id.* §§ 411.0072(a)(1), .00755(a)(2) (“disciplinary action” defined in section 411.0072(a)(1)). You assert the submitted information consists of personnel records of a commissioned officer of the department that is subject to section 411.00755. In Open Records Letter No. 2010-12863 (2010), this office issued a previous determination to the department authorizing it to withhold, with the exception of the information listed in subsections 411.00755(b)(1)-(12), the personnel records of commissioned officers of the department under section 411.00755(b) of the Government Code, without the necessity of requesting an attorney general decision. *See* Open Records Decision No. 673 (2001) (previous determinations generally). You assert the submitted information does not contain the types of information listed in subsections 411.00755(b)(1)-(12). You further assert there is no indication the release provisions in subsection 411.00755(c) are applicable. However, we note the submitted information pertains to an administrative investigation of a commissioned officer of the department that resulted in disciplinary action, the officer’s suspension. Pursuant to section 552.303 of the Government Code, this office requested you provide additional information explaining how the submitted information does not consist of information subject to release under subsection 411.00755(b)(1)(B) of the Government Code. As of the date of this letter, we have not received a response from the department.<sup>1</sup> Because the department did not respond to our request, we find you have failed to establish the submitted information is not subject to release under subsection 411.00755(b)(1)(B). Therefore, because the submitted information consists of an investigation that resulted in the suspension of the named officer, we find the submitted information is subject to subsection 411.00755(b)(1)(B). Accordingly, the submitted information may not be withheld under section 411.00755 and is not encompassed by the previous determination issued to the department in Open Records Letter No. 2010-12863.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201 of the Family Code provides, in part, 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

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<sup>1</sup>Regardless of whether the department failed to comply with section 552.303(d) of the Government Code, we note section 552.101 of the Government Code is a mandatory exception that constitutes a compelling reason to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.303. *See* Gov’t Code §§ 552.007, .303, .352. Accordingly, we will consider the department’s argument under section 552.101.

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 argue the submitted information relates to an investigation into alleged child abuse under chapter 261 of the Family Code. *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 of the Family Code 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). Upon review, we find, the submitted information includes a police report that was used or developed in an investigation of alleged child abuse. The report, which we have marked, is within the scope of section 261.201(a)(2) of the Family Code. Further, section 261.201(a)(1) states the identity of the reporting party must be withheld under section 261.201(a)(1) of the Family Code. We find the information we marked is within the scope of section 261.201(a)(1). Accordingly, the information we marked is confidential pursuant to section 261.201(a) of the Family Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). We note the remaining information relates to an administrative investigation of a department officer, and you have not established any of the remaining information consists of a report of child abuse or neglect nor does the information reveal the identity of an individual who made a report of suspected child abuse or neglect for purposes of section 261.201(a)(1) of the Family Code. Furthermore, we find you have failed to demonstrate how any portion of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2) of the Family Code. Accordingly, section 261.201(a) is not applicable to any of the remaining information, and no portion of this information may be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found the identity of a victim of child abuse or

neglect is private. *Cf.* Fam. Code § 261.201. Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the remaining information contains information subject to section 552.117 of the Government Code.<sup>2</sup> Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the department must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the department may only withhold the marked cellular telephone numbers if the cellular service was not paid for by a governmental body.<sup>3</sup>

In summary, the department must withhold (1) the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; (2) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the information we marked under section 552.117(a)(2) of the Government Code; however, the department may only withhold the marked cellular telephone numbers if the cellular service was not paid for by a governmental body. 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/>

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<sup>2</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>3</sup>Open Records Decision No. 670 (2001) authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. ORD 670 at 6.

[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,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 516346

Enc. Submitted documents

c: Requestor  
(w/o enclosures)