



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2014

Mr. David V. Overcash
Counsel for the City of Anna
Wolfe, Tidwell & McCoy, L.L.P.
2591 Dallas Parkway, Suite 205
Frisco, Texas 75034

OR2014-08998

Dear Mr. Overcash:

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# 524011 (City file No. C03029PIR20140306-01).

The City of Anna (the "city"), which you represent, received a request for information pertaining to a named individual, including a specified incident. 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.

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 protected by other statutes. Section 261.201 of the Family Code provides:

- (a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). We agree report number 13-000370 consists of information that was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section 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). Accordingly, we find this information is subject to chapter 261 of the Family Code.

We note, however, the requestor is the step-mother of the child victim listed in the information at issue and is not alleged to have committed the abuse. As such, this requestor may have a right of access to the information at issue pursuant to section 261.201(k). *See id.* § 261.201(k). Therefore, we rule conditionally. If the requestor is not the child victim’s parent, managing conservator, or legal representative, then report number 13-000370 must

be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the child victim's parent, managing conservator, or legal representative, the city may not use section 261.201(a) to withhold this information from the requestor. *See id.* In that instance, section 261.201(1)(2) provides that any information excepted from disclosure under the Act or other law must be withheld. *See id.* § 261.201(1)(2). Thus, in the event the requestor does have a right of access to report number 13-000370, we will address the city's remaining arguments under sections 552.101 and 552.108 of the Government Code. We will also consider your argument for the remaining submitted report.

You claim portions of report numbers 13-000370 and 13-000095 are subject to the doctrine of common-law privacy, which is also encompassed by section 552.101. Common-law privacy 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. *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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

We note if the requestor is the parent, managing conservator, or legal representative of the child whose privacy is at issue in report number 13-000370, then she has a right of access to information pertaining to the child that would otherwise be confidential under common-law privacy and none of the information in report number 13-000370 may be withheld on this basis. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Upon review, we find the information we have marked in report number 13-0000950 satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern, or the requestor has a right of access to the information. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.108(a)(2) 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). You state the information you have marked in report number 13-000370 relates to a criminal investigation that did not result in conviction or deferred adjudication. Based on your representation and our review of the information at issue, we conclude that section 552.108(a)(2) is applicable to this information and the city may withhold the information you have marked under section 552.108.

Section 552.130 provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130(a). Upon review, we find the city must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.¹

In summary, if the requestor is not the child victim’s parent, managing conservator, or legal representative, then report number 13-000370 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the child victim’s parent, managing conservator, or legal representative, then, the city may withhold the information you have marked in report number 13-000370 under section 552.108(a)(2) of the Government Code. The city must withhold the information 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 must release the remaining information.

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/>

¹We note you state you will redact driver’s license information and cite to Open Records Decision No. 684. Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including Texas driver’s license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, we note effective May 18, 2013, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. 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 id.* § 552.130(d), (e). Thus, the statutory amendment to section 552.130 of the Government Code supercede Open Records Decision No. 684. Therefore, a governmental body may redact information subject to subsections 552.130(a) only in accordance with section 552.130, not Open Records Decision No. 684.

[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 that reads "Paige Lay". The signature is written in a cursive, flowing style.

Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 524011

Enc. Submitted documents

c: Requestor
(w/o enclosures)