



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2014

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053-4045

OR2014-10541

Dear Mr. Alcorn:

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# 526232.

The Garland Police Department (the "department") received a request for information pertaining to 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 public 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, such as section 261.201 of the Family Code. Section 261.201 provides, in part, as follows:

(a) Except as provided by Section 261.203, the 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.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

Fam. Code § 261.201(a), (h). You contend the submitted information is confidential under section 261.201(a). In this instance, however, the information at issue is related to an investigation of alleged abuse or neglect that occurred in a child care facility that was regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code at the time of the incident in question. Section 261.201 does not apply to an investigation of alleged or suspected child abuse or neglect in a home or facility regulated under chapter 42. *Id.* § 261.201(h). Therefore, section 261.201(a) of the Family Code is not applicable to the submitted information, and the department may not withhold the submitted information under section 552.101 of the Government Code on that basis.

Section 552.108(a)(2) excepts from disclosure “[information 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). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (providing that a governmental body must provide written comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a matter that “*has not* resulted in a conviction or deferred adjudication” (emphasis added). We note, however, section 552.108(a)(2) is applicable only if the information at issue is related to a concluded criminal case that “*did not* result in conviction or deferred adjudication” (emphasis added). *See id.* § 552.108(a)(2). Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to the submitted information. Accordingly, the department may not withhold any of the submitted information under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code also 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial*

Foundation. Id. at 683. We note common-law privacy generally protects the identifying information of child victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Upon review, we find the information we have indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department 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/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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 526232

Enc. Submitted documents

c: Requestor
(w/o enclosures)