



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2014

Ms. Cara Leahy White
Counsel for the City of Benbrook
Taylor, Olson, Adkins, Sralla, & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2014-17890

Dear Ms. White:

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# 538598.

The Benbrook Police Department (the "department") received a request for a specified offense report. You state the department will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.¹ 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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 Chapter 552, Government Code, and may be disclosed only for

¹Section 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* 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). 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. *See id.* § 552.147(b).

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 [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). The submitted information relates to an investigation of alleged child abuse conducted by the department. *See id.* §§ 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code), 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 the requestor is a parent of a child victim listed in the submitted report. We further note the requestor is not alleged to have committed the abuse. Thus, pursuant to section 261.201(k), the submitted information may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a) of the Family Code. *See id.* § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party shall be withheld from disclosure. *Id.* § 261.201(l)(3). Accordingly, the department must withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Additionally, section 261.201(l)(1) states any personally identifiable information about a victim or witness under 18 years of age who is not a child of the parent, managing conservator, or other legal representative requesting the information must be withheld from disclosure. *See id.* § 261.201(l)(1). Thus, the department also must withhold the personally identifiable information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. Finally, we note section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address your argument 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 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. 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 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. As noted above, the requestor is the parent of one of the children whose privacy interests are at issue. Accordingly, the requestor has a special right of access under section 552.023 of the Government Code to the information that implicates his child's privacy interests. *See* Gov't Code § 552.023 (person or person's representative has special right of access to information excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); *see also* 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 satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the remaining information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with subsections 261.201(1)(1) and (1)(3) of the Family Code. The department also must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information to this requestor.²

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 be³ 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 538598

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a special right of access to the information being released in this instance. See Fam. Code § 261.201(k); Gov't Code 552.023.