



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2014

Mr. Richard A. McCracken
Counsel for the City of Watauga
Evans, Daniel, Moore, Evans & Lazarus
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2014-18958

Dear Mr. McCracken:

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# 546017 (PIR Nos. 14-415 and 14-418).

The Watauga Police Department (the "department") received two requests from different requestors for a specified incident report. 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. Section 552.101 encompasses information made confidential by section 261.201 of the Family Code, which provides, in relevant part, as follows:

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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 consists of information used or developed in an investigation of alleged or suspected abuse or neglect under chapter 261 of the Family Code. Accordingly, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for the purposes of this section as a 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261). You have not indicated the department has adopted a rule that governs the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we conclude the department

must withhold the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

However, we note the second requestor is the father of one of the child victims listed in the submitted report, and he is not alleged to have committed the abuse or neglect. Thus, the department may not withhold the submitted information from the second requestor under section 552.101 in conjunction with section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(k). However, before the department provides any of this information to the second requestor, the department must redact any personally identifying information about the other child victim listed in the report. *See id.* § 261.201(l)(1), (3). Therefore, the department must withhold the identifying information of a child victim, which you have highlighted in yellow, under section 552.101 of the Government Code in conjunction with sections 261.201(l)(1) of the Family Code. In addition, section 261.201(l)(2) of the Family Code states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(l)(2). Thus, we will address your additional argument under section 552.101.

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. The 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). Upon review, we find the information the department highlighted in green satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information you have highlighted in green under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the submitted information in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. In releasing the submitted information to the second requestor pursuant to section 261.201(k) of the Family Code, the department must withhold (1) the information you have highlighted in yellow under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code and (2) the information you have highlighted in green under section 552.101 of the Government Code in conjunction with common-law privacy.

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,

A handwritten signature in cursive script that reads "Britni Fabian".

Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 546017

Enc. Submitted documents

c: Requestors
(w/o enclosures)