



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 2, 2015

Ms. Paige Mebane
Assistant City Attorney
City of Fort Worth
Office of the City Attorney
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2015-06335

Dear Ms. Mebane:

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# 559679 (ORR# W040035).

The City of Fort Worth (the "city") received a request for all police reports and calls concerning a specified address. The city indicates it will withhold information under section 552.130 of the Government Code and the previous determination issued in Open Records Letter No. 2011-15641 (2011).¹ The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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

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). Open Records Letter No. 2011-15641 authorizes the city to withhold a 9-1-1 caller's originating telephone number furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code without requesting a decision.

Code § 552.101. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

[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 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). Upon review, we find police report number 12-62282 was used or developed by the city's police department (the "department") in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201). Thus, the information is within the scope of section 261.201 of the Family Code. The city does not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the city must withhold police report number 12-62282 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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). Upon review, we find the submitted recording and some of the remaining information, which we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the submitted recording in its entirety and the remaining information we have marked under section 552.101 of the

²As our ruling is dispositive, we do not address the city's argument to withhold this information.

Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

To conclude, the city must withhold police report number 12-62282 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must also withhold the submitted recording in its entirety and the remaining information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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/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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 559679

Enc. Submitted documents

c: Requestor
(w/o enclosures)