



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 22, 2015

Ms. Sylvia McClellan
Assistant City Attorney
City of Dallas
Criminal Law and Police Division
1400 South Lamar Street
Dallas, Texas 75215

OR2015-07727

Dear Ms. McClellan:

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# 560784 (DPD Request No. 2015-01724).

The Dallas Police Department (the "department") received a request for information regarding a specified investigation of a named officer. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-17478 (2014). In that ruling, we held the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the department must continue to rely on Open Records Letter No. 2014-17478 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). As we are able to make this determination, we need not address your argument for this information subject to Open Records Letter No. 2014-17478. However, we will address your arguments for the remaining information, which was not the subject of the previous ruling.

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 of the Government Code also encompasses section 261.201 of the Family Code, which provides 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 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). You assert a portion of the remaining information is subject to section 261.201(a). We note, however, the information at issue pertains to an internal affairs investigation. We find you have failed to demonstrate that any of the information at issue is a report of alleged or suspected child abuse or was used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, section 261.201(a) is not applicable to any of the information at issue, and no portion of the remaining information may be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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. This office has also held common-law privacy protects the identifying information of a juvenile victim of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. 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.

Section 552.136(b) of the Government Code states “Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). You state an employee identification number is the same number used for the city of Dallas credit union accounts plus one additional number. Thus, the department must withhold the employee identification number you have marked under section 552.136 of the Government Code.

In summary, the department must continue to rely on Open Records Letter No. 2014-17478 as a previous determination and withhold the identical information at issue in accordance with that ruling. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you have marked under section 552.136 of the Government Code. 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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/cz

Ref: ID# 560784

Enc. Submitted documents

c: Requestor
(w/o enclosures)