



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 24, 2015

Mr. Daniel Ortiz  
Assistant City Attorney  
Office of the City Attorney  
The City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2015-12508

Dear Mr. Ortiz:

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# 568380 (Case No. 15-1026-6082).

The El Paso Police Department (the "department") received a request for all calls for service and incident reports during a specified time period pertaining to three specified addresses. You state the department will provide some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> 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 protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

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<sup>1</sup>Although you raise section 552.101 in conjunction with the doctrine of constitutional privacy for the submitted information, you provide no arguments explaining how this doctrine is applicable to the information at issue. Therefore, we assume you no longer assert this doctrine. *See* Gov't Code §§ 552.301, 302.

(a) [T]he 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.

Fam. Code § 261.201(a). You state the information pertaining to incident report number 08-050292 was used or developed in an investigation by the department of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 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 disabilities of minority removed for general purposes). Upon review, we find the information at issue is within the scope of section 261.201 of the Family Code. We have no indication 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 find the information at issue is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986)* (predecessor statute). Accordingly, the department must withhold the information pertaining to incident report number 08-050292 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family 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 or 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 we have marked in the remaining information 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, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the

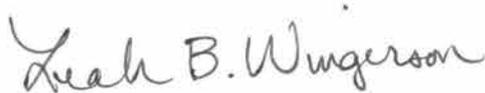
department may not withhold the remaining information under section 552.101 of the Government Code on that basis.

In summary, the department must withhold the information pertaining to incident report number 08-050292 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. 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 release the remaining information.<sup>2</sup>

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](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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/bhf

Ref: ID# 568380

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the remaining information includes a social security number. 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 under the Act. Gov't Code § 552.147(b).