



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 22, 2015

Ms. Lauren F. Crawford
First Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2015-19838

Dear Ms. Crawford:

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# 581893.

The City of Bryan (the "city") received a request for information pertaining to two specified addresses for a specified time period. 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. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part, the following:

- (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.

Fam. Code § 261.201(a). Upon review, we find some of the submitted information pertains to investigations by the city's police department (the "department") of alleged or suspected child abuse or neglect and falls within the scope of section 261.201 of the Family Code. *See 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 the disabilities of minority removed for general purposes), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). You state the department has not adopted a rule that governs the release of this type of information. Based on this representation we determine the city must withhold the information we have marked in its entirety under section 552.101 in conjunction with section 261.201(a).¹

However, we are unable to determine the age of the victim at issue in event number 092330148. Thus, we must rule conditionally with respect to this report. If the victim at issue in event number 092330148 was under the age of eighteen at the time of the incident at issue, we find the report pertains to an investigation by the department of alleged or suspected child abuse and it must be withheld in its entirety under section 552.101 in conjunction with section 261.201(a). If, however, the victim at issue in event number 092330148 was eighteen years of age or older at the time of the incident at issue, we find you have failed to demonstrate this information involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 of the Family Code, or how this information was used or developed in an investigation under chapter 261. In that instance, we conclude the city may not withhold event number 092330148 under section 552.101 on this basis and we will address your remaining argument against disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law* § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

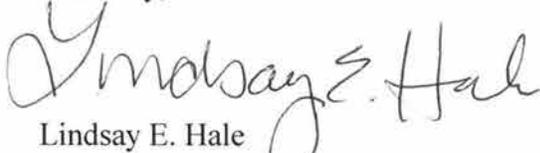
You assert event number 092330148 reveals the identities of reporting parties and should be withheld in its entirety. Upon review, we find portions of the information reveal the identity of an individual who reported a possible violation of criminal law to the department. You do not indicate, nor does it appear, the subject of the complaint knows the identity of the reporting party. Therefore, based on your representations and our review, we conclude the city may withhold the reporting party's identifying information in event number 092330148, which we have marked, under section 552.101 in conjunction with the common-law informer's privilege. See Open Records Decision No. 156 (1977) (name of person who makes complaint about another individual to city's animal control division is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law). However, we find you have failed to demonstrate the applicability of the informer's privilege to the remaining information, and the city may not withhold it under section 552.101 on that basis.

In summary, the city must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the victim at issue in event number 092330148 was under the age of eighteen at the time of the incident at issue, the city must withhold the report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the victim at issue in event number 092330148 was eighteen years of age or older at the time of the incident at issue, the city may withhold the reporting party's identifying information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege and 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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 581893

Enc. Submitted documents

c: Requestor
(w/o enclosures)