



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 8, 2009

Mr. Gregory A. Alicie  
Open Records Specialist  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2009-06173

Dear Mr. Alicie:

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# 342426.

The Baytown Police Department (the "department") received a request for all incident reports regarding the requestor from May 1, 2002 to May 1, 2003. You state social security numbers will be redacted from the responsive information and that the department has released a redacted copy of Incident Report No. 2002-25440 to the requestor.<sup>1</sup> 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 section 261.201 of the Family Code, which provides in relevant part:

(a) The 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

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<sup>1</sup>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.

(2) except as otherwise provided in this section, the files, reports, records, communications, 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 of the submitted information, we conclude that Incident Report No. 2002-45542 constitutes a report of alleged or suspected abuse or neglect made under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “child abuse” and “neglect” for purposes of section 261.201); *id.* § 101.003(a) (defining “child” for purposes of section 261.201). Therefore, this report is subject to section 261.201(a)(1). You have not indicated that the department has adopted a rule governing the release of this type of information. Accordingly, we find Incident Report No. 2002-45542 is confidential under section 261.201(a)(1) of the Family Code and the department must withhold it in its entirety under section 552.101 of the Government Code.<sup>2</sup> *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that some kinds of medical information and information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that the information you have marked in the remaining report is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, Incident Report No. 2002-45542 must be withheld in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The information you have marked in the remaining report must be withheld under

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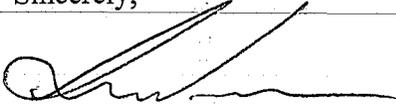
<sup>2</sup>We note that the requestor, as the parent of a child who is the subject of reported abuse or neglect, may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services (“DFPS”). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if [DFPS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure. Fam. Code § 261.201(g).

section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released to the requestor.<sup>3</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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 342426

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note that the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Therefore, if the department receives another request for this same information from a different requestor, then the department should again seek a decision from this office.