



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2009

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Lubbock County
916 Main Street, Suite 1018
Lubbock, Texas 79401

OR2009-10410

Dear Ms. Clarke:

~~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# 350497.~~

The Lubbock County Sheriff's Office (the "sheriff") received a request for a specified incident report. You claim that 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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code, which provides in 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 [the Family 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 you have not demonstrated that the submitted information constitutes a report of alleged or suspected abuse made under chapter 261 or how this information was used or developed in an investigation under chapter 261. *See id.* Consequently, the sheriff may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of section 261.201 of the Family Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type 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. We find that portions of the submitted information are intimate or embarrassing and of no legitimate public concern. However, we note the requestor is the father of the individual to whom the private information pertains. As such, this requestor has a special right of access to his minor daughter's private information under section 552.023 of the Government Code.¹ *See Gov't Code § 552.023(a)*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the sheriff may not withhold any of the submitted information under

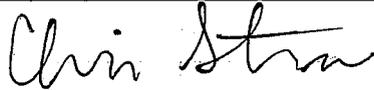
¹Section 552.023 of the Government Code provides that a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(b). If the sheriff receives another request for this information from a person who would not have a special right of access to this information, then the sheriff should resubmit this same information and request another decision. *See id.* §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

section 552.101 on the basis of common-law privacy. As you make no further arguments against disclosure, the sheriff must release the submitted information to this requestor.²

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, 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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 350497

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the submitted information contains the social security number of an individual other than the requestor. 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.