



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2009

Ms. Jerris Penrod Mapes
Assistant City Attorney
Killeen Police Department
402 North Second Street
Killeen, Texas 76541-5298

OR2009-17165

Dear Ms. Mapes:

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# 363265 (Killeen ID No. W002307).

The City of Killeen (the "city") received a request for copy of a specified report. 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 pertinent part:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). You indicate the submitted report was used or developed during an investigation of alleged child abuse. *See* Fam. Code § 261.001(1)(C) (defining "abuse" for purposes of Fam. Code ch. 261). Based on your representations and our review, we find the submitted report is generally confidential under section 261.201 of the Family Code. *See* Fam. Code § 261.201(a). In this instance, however, the requestor is the parent of the children listed in the report, and the requestor is not alleged to have committed the suspected abuse. As such, the submitted report may not be withheld from this requestor under section 261.201(a). Fam. Code § 261.201(k) (providing a child's parent can obtain information that is subject to section 261.201(a) concerning reported abuse or neglect of the child as long as the parent is not alleged to have committed the abuse or neglect). We note section 261.201(l) provides that, notwithstanding section 261.201(k), any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. Fam. Code § 261.201(l)(2). You assert the submitted report is excepted from public disclosure under section 552.101 of the Government Code in conjunction with

common-law privacy. Accordingly, we will consider your remaining argument against disclosure.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy 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. Although you generally assert the submitted report is excepted from disclosure under section 552.101 in conjunction with common-law privacy, you have not provided any arguments explaining the applicability of privacy to the report. See Gov't Code § 552.301(e)(1)(A) (governmental body must provide sufficient arguments to establish applicability of claimed exceptions). Furthermore, to the extent information concerning the children who are the subject of the report would be protected under common-law privacy, as the parent of the children, the requestor has a special right of access to information that would ordinarily be withheld to protect the minors' common-law privacy. See *id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Thus, the submitted report may not be withheld from the requestor under section 552.101 in conjunction with common-law privacy.

We note section 261.201(1)(3) of the Family Code provides that before a parent can copy and inspect a record of a child under 261.201(k), the identity of the party who made the report must be redacted. Fam. Code § 261.201(1)(3). Accordingly, the identity of the reporting party, which we have marked, must be withheld pursuant to section 261.201(1)(3). The remaining information must be released to the requestor.¹

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

¹Because this requestor has a special right of access to information that would ordinarily be confidential under section 261.201 of the Family Code, the city must again seek a decision from this office if it receives another request for the same information from a different requestor.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 363265

Enc. Submitted documents

c: Requestor
(w/o enclosures)