



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2009

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
For City of McKinney
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2009-17901

Dear Mr. Griffith:

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# 365580 (ORR# 09-2019).

The McKinney Police Department (the "department"), which you represent, received a request for information related to a specified arrest. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ 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 as follows:

(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:

¹Although you also raised section 552.108 of the Government Code, you have provided no arguments explaining how this exception is applicable to the submitted information. Thus, the department has waived its claim under section 552.108. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general).

(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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(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). Because the submitted information consists of files, reports, or records used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter section 261.201); *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 the disabilities of minority removed for general purposes), Penal Code § 20.011(c)(1) (defining “child” for purposes of Penal Code section 22.011 as “a person younger than 17 years of age who is not the spouse of the

actor.”). Based on your representations and our review, we find the submitted report is generally confidential under section 261.201 of the Family Code.

However, the requestor is a parent of one of the child victims listed in the report, and the parent is not alleged to have committed the alleged abuse. Thus, the department may not use section 261.201(a) to withhold this report from the requestor. *Id.* § 261.201(k).

Additionally, section 261.201(1)(1) states that any personally identifiable information about a victim or witness under 18 years of age who is not the requestor’s child must be withheld. The department must withhold the personally identifiable information about a victim or witness under 18 years of age who is not the requestor’s child under section 552.101 in conjunction with section 261.201(1)(1). Section 261.201(1)(2), however, states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. As you assert that some or all of the remaining information is excepted from public disclosure under section 552.101 in conjunction with common-law privacy, we will consider your remaining argument against disclosure. *See id.* § 261.201(1)(2).

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. *See 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. *See id.* at 683.

Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decision Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The report indicates the requestor knows the identity of one of the alleged victims. Thus, withholding only the alleged victim’s identifying information from the requestor would not preserve the victim’s common-law right to privacy. We note, however, the requestor is the parent of the minor child whose private information is at issue and therefore has a special right of access to information that would ordinarily be withheld to protect the minor’s privacy interests. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person or person’s representative to whom information relates on grounds that information is considered confidential under privacy principles). Therefore, the submitted report may not be withheld in its entirety on the basis of common-law privacy. However, upon review we find that some of the information within the report is highly intimate or embarrassing and of no legitimate public concern. Thus, this information, which

we have marked, must be withheld under section 552.101 in conjunction with common-law privacy.

Accordingly, pursuant to section 261.201(k) of the Family Code, the department shall provide to the requestor information concerning the reported abuse or neglect of the requestor's child that would otherwise be confidential under this section. However, the department must withhold under section 552.101 of the Government Code (1) the personally identifiable information of victims or witnesses under 18 years of age who are not the requestor's child in conjunction with section 261.201(l)(1) of the Family Code; and (2) the information we have marked in conjunction with common-law privacy.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, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 365580

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released contains confidential information regarding an alleged child victim to which the requestor has a right of access as the child's parent. See Fam. Code § 261.201(k). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.