



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 12, 2010

Mr. David K. Walker  
Montgomery County Attorney  
207 West Phillips, 1<sup>st</sup> Floor  
Conroe, Texas 77301

OR2010-00578

Dear Mr. Walker:

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# 367213.

The Montgomery County Sheriff's Office (the "sheriff") received a request for a specific offense 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. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the 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:

(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). You state the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1)(E) (defining “child abuse”); *see also id.* § 101.003(a) (defining “child” for purposes of this section). Based on your representation and our review, we find the submitted information is generally confidential under section 261.201 of the Family Code. However, the requestor

is the parent of the child victim listed in the submitted information, and the requestor is not alleged to have committed the suspected abuse or neglect. In this instance, the sheriff may not use section 261.201(a) to withhold the submitted information from this requestor.<sup>1</sup> *Id.* § 261.201(k). Section 261.201(l)(2), however, states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Furthermore, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). You also raise common-law privacy. Accordingly, we will consider your remaining argument against disclosure.

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. As noted above, the requestor is the parent of a 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, no portion of the report may be withheld on the basis of common-law privacy.

We note that the report contains information that is subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. *Gov't Code* § 552.130(a)(1). Upon review, we find the sheriff must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code.<sup>3</sup>

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<sup>1</sup> We note the submitted information contains confidential information regarding the 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 sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office.

<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos.* 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup> We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the sheriff must withhold the information, which we have marked, that identifies the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The sheriff must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code. The remainder of the report must be released to this requestor.<sup>4</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, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/rl

Ref: ID# 367213

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup> We note that the information being released contains a social security number. 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.