



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 5, 2010

Mr. Bryan McWilliams
Public Safety Legal Advisor
Assistant City Attorney
City of Amarillo
200 South East Third Avenue
Amarillo, Texas 79101-1514

OR2010-01803

Dear Mr. McWilliams:

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# 369719 (City of Amarillo # 1370).

The Amarillo Police Department (the "department") received a request for information pertaining to a specified incident. You claim that the requested 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 protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant 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 . . . 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 incident report was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021); *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). 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 may be a legal guardian of the child victim listed in the report, and the requestor is not alleged to have committed the abuse. As such, this requestor may have a right of access to the submitted information pursuant to section 261.201(k). As we are unable to determine whether the requestor is a legal guardian of the child victim, we will rule conditionally. If the requestor is not a legal guardian of the child victim listed in the submitted information, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the requestor is the guardian of the child victim, pursuant to section 261.201(k), the department may not withhold the submitted information from the requestor under section 261.201(a). *Id.* § 261.201(k). However, we note that section 261.201(l) also provides that before a guardian can copy and inspect a record of a child under section 261.201(k), any personally identifiable information about a victim or witness under 18 years of age who is not the guardian's child and the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(1), (3). Further, section 261.201(l)(2) 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). You also assert the submitted information is excepted from public disclosure under section 552.101 in conjunction with common-law privacy. To the extent the requestor is a guardian of the child victim and the department may not withhold the submitted information under section 261.201(a) of the Family Code, 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The courts and this office have recognized victims of sexual assault have certain common-law privacy interests. *See* 540 S.W.2d 668; *see also* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review, we find the submitted information is generally subject to common-law privacy. However, as noted above, the requestor may be a guardian of the child whose privacy interest is implicated. *See* Gov't Code § 552.023(a) (person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, pursuant to section 552.023, if the requestor is a guardian of the child whose privacy interest is implicated, she has a right of access to the information which would otherwise be confidential under common-law privacy, and the department may not withhold any portion of it under section 552.101 of the Government Code on that basis.

In summary, if the requestor is not a legal guardian of the child victim listed in the submitted information, the department must withhold the submitted information in its entirety under

section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the guardian of the child victim, the department must withhold any personally identifiable information of any child witness who is not the requestor's child and the reporting party's identity under section 552.101 in conjunction with sections 261.201(1)(1) and 261.201(1)(3) of the Family Code. 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 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 369719

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹We note that if the requestor has a statutory right of access to the submitted information, the department must again seek a decision from this office if it receives another request for the same information from another requestor.