



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2010

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2010-02219

Dear Ms. Sandoval-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# 370352.

The El Paso Police Department (the "department") received a request for records pertaining to the requestor's daughter for a specified period of time. You state you will provide some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.147 of the Government Code. We have considered the exceptions 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 information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides in relevant part:

(a) Except as provided by Section 261.203, 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 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). We find that incident report numbers 09-112004 and 06-01333567 were used or developed in investigations of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *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). We therefore conclude these incident reports fall within the scope of section 261.201(a). While the requestor is the parent of the child victims listed in incident report number 06-01333567, the requestor is alleged to have committed the suspected abuse or neglect in this report. Thus, the requestor does not have a right of access to incident report number 06-01333567 under

section 261.201(k). *See id.* § 261.201(k). As you do not indicate that the department has adopted a rule that governs this type of information, we assume that no such rule exists. Given that assumption, we conclude that the department must withhold incident report number 06-01333567 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

However, in report number 09-112004, the requestor is the parent of the child victim and is not alleged to have committed the suspected abuse or neglect. Therefore, the department may not use section 261.201(a) to withhold this report from this requestor. *See* Fam. Code § 261.201(k). Section 261.201(1)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Thus, the department must withhold the identifying information of the reporting parties under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. Additionally, section 261.201(1)(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(1)(2).

You also contend report number 09-112004 is confidential in its entirety on the basis of common-law privacy and constitutional privacy. 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types 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.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village*, Tex., 765 F.2d 490 (5th Cir. 1985)).

As previously noted, however, the requestor is a parent of the minor alleged sexual assault victim. As such, she has a special right of access to information that would ordinarily be withheld to protect her child's common-law or constitutional privacy interests. *See* Gov't Code § 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). Therefore, none of report number 09-112004 may be withheld from this requestor on the basis of common-law or constitutional privacy.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. The relevant language of section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). Upon review, we agree that the remaining reports involve juveniles engaged in delinquent conduct or conduct indicating a need for supervision occurring after September 1, 1997; therefore, the submitted reports are subject to section 58.007. We note the requestor's child is not a juvenile offender listed in report number 08-347325. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 of the Family Code apply to this report. Thus, report number 08-347325 is subject to section 58.007(c), and must be withheld in its entirety under section 552.101 of the Government Code.

However, the requestor is the parent of one of the juvenile offenders in report numbers 09-321241, 09-312180, 09-253024, 08-253267, and 08-139276. Under section 58.007(e), the requestor has a right to inspect or copy law enforcement records concerning her child. *See id.* § 58.007(e). Section 58.007(j) provides, however, that any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). Accordingly, the department must withhold the identifying information of the juvenile offenders who are not the requestor's child in report number 09-253024 under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. Further, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, we will address your claim under section 552.108 of the Government Code for some of the remaining reports. We note report number 09-253024 contains information subject to section 552.130 of the Government Code.¹ Therefore, we will also address this exception pursuant to section 58.007(j)(2) of the Family Code.

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that report numbers 09-321241, 09-312180, 08-253267, and 08-139276 relate to pending criminal investigations and prosecutions. Based upon your representation and our review, we conclude that the release of these reports would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to report numbers 09-321241, 09-312180, 08-253267, and 08-1392762.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-8; see also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold report numbers 09-321241, 09-312180, 08-253267, and 08-1392762 under section 552.108(a)(1) of the Government Code. In releasing basic information from report number 08-253267, the department must redact any information that identifies or tends to identify a juvenile offender other than the requestor's child. See Fam. Code § 58.007(j)(1).

Section 552.130 of the Government Code excepts from disclosure information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. Thus, the department must withhold information we have marked in report number 09-253024 under section 552.130 of the Government Code.²

Finally, 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. *Id.* § 552.147(b). However, this exception protects personal privacy; therefore, the requestor has a right of access to her child's and her own social security number. See *id.* § 552.023. Accordingly, the department may withhold only social security numbers that belong to living persons other than the requestor or the requestor's child under section 552.147(b) of the Government Code.

In summary, the department must withhold incident report number 06-01333567 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. From incident report number 09-112004, the department must withhold the reporting parties' identifying information under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The department must withhold incident report number 08-347325 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of personally identifiable information concerning the other juvenile offenders which must be redacted pursuant to section 58.007(j)(1) of the Family Code and the information we have marked under section 552.130 of the Government Code, report number 09-253024 must be released

²We 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.

to the requestor pursuant to section 58.007(e) of the Family Code. With the exception of basic information, the department may withhold report numbers 09-321241, 09-312180, 08-253267, and 08-1392762 under section 552.108(a)(1) of the Government Code. In releasing basic information from report number 08-253267, the department must redact any information that identifies or tends to identify a juvenile offender other than the requestor's child. The department may withhold only social security numbers that belong to living persons other than the requestor or the requestor's child under section 552.147(b) of the Government Code. The remaining information must be released.³

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# 370352

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

³Because the requestor has a right of access to certain information being released that otherwise would be exempted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.