



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 19, 2010

Ms. Michelle T. Rangel  
Assistant City Attorney  
301 Jackson Street, Suite 728  
Richmond, Texas 77469

OR2010-02529

Dear Ms. Rangel:

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# 370856.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for a specified offense report. You claim the requested information is excepted from disclosure under sections 552.101, 552.130, 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. 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). Upon review, we note the submitted offense 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). Accordingly, we find the submitted offense report is generally confidential under section 261.201 of the Family Code.

However, the requestor may be the father 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 the father of the child victim, we will rule conditionally. If the requestor is not the father of the child victim listed in the submitted information, the sheriff must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

If the requestor is the father of the child victim, pursuant to section 261.201(k), the sheriff 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 parent 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 parent's child and the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(1), (3). Thus, the sheriff must withhold the information we have marked under section 552.101 in conjunction with section 261.201(l)(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 assert the submitted information is excepted from public disclosure under section 552.101 in conjunction with common-law privacy and section 411.083 of the Government Code, as well as sections 552.130 and 552.147 of the Government Code. To the extent the requestor is the father of the child victim and the sheriff may not withhold the submitted information under section 261.201(a) of the Family Code, we will consider your arguments 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 the father 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 the father of the child whose privacy interest is implicated, he has a right of access to the information regarding his child which would otherwise be confidential under common-law privacy, and the sheriff may not withhold any portion of it under section 552.101 of the Government Code on that basis. We note that this office also has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Some of the submitted information implicates the common-law privacy

interests of another individual. Thus, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Similarly, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). However, section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we determine you must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, we conclude that no portion of the remaining information constitutes CHRI generated either by the TCIC or NCIC database. Therefore, no portion of the remaining information is confidential under chapter 411, and none of it may be withheld under section 552.101 on that basis.

Next, you claim some of the remaining information is confidential under section 552.130, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Therefore, the sheriff must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>1</sup>

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>2</sup> *Id.* § 552.147(a).

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<sup>1</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 Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup> We note that section 552.147(b) 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.

The social security numbers contained in the remaining information may be withheld under section 552.147 of the Government Code.

In summary, if the requestor is not the father of the child victim listed in the submitted information, the sheriff 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 father of the child victim, the sheriff must withhold the following: 1) the personally identifiable information of any child witness who is not the requestor's child and the reporting party's identity, which we have marked, under section 552.101 in conjunction with sections 261.201(1)(1) and 261.201(1)(3) of the Family Code; 2) the information we have marked pursuant to section 552.101 in conjunction with common-law privacy; 3) the CHRI we have marked under section 552.101 in conjunction with section 411.083 of the Government Code; and 4) the information we have marked pursuant to section 552.130. Also, the sheriff may withhold the social security numbers in the remaining information under section 552.147. The remaining information must be released to the requestor.<sup>3</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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/rl

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<sup>3</sup>We note that if the requestor has a statutory right of access to the submitted information, the sheriff must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 370856

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)