



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2010

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2010-03186

Dear Mr. Weir:

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# 371745 (COSA File Nos. 2009-4830 and 2009-4848).

The City of San Antonio (the "city") received two requests from the same requestor for two specified police reports. You claim that some of 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 information you submitted.

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 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 types of information considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances where it is demonstrated that the requestor knows

the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, report number 90818413 reflects that the requestor knows the identity of the individual involved as well as the nature of the incident. Therefore, withholding only the identity of the individual involved or certain details of the incident from this requestor would not preserve the individual's common-law right to privacy. Accordingly, to protect the privacy of the individual to whom the information at issue pertains, report number 90818413 must be withheld from this requestor in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Although this is not an instance in which report number 90913838 must be withheld in its entirety on privacy grounds, we conclude that some of the information in that report is highly intimate or embarrassing and not of legitimate public concern. The city must also withhold that information, which we have marked, under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses information that other statutes make confidential. Section 261.201 of the Family Code provides in 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, other than the department 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.

(1) 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.

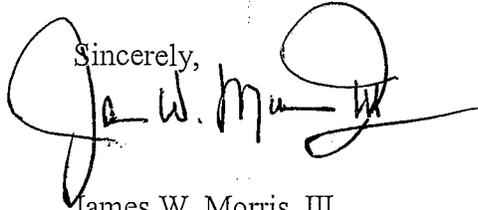
Fam. Code § 261.201(a), (k)-(l). We find that some of the remaining information at issue constitutes a report of alleged or suspected child abuse made under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of Fam. Code ch. 261). Therefore, the report of alleged or suspected child abuse and the identity of the person who made the report are generally confidential under section 261.201(a)(1). We have marked that information. We note that the marked information identifies the requestor as a parent of the victim of the alleged or suspected child abuse. *See* Fam. Code § 261.201(k). In this instance, however, the requestor is the person accused of committing the alleged or suspected abuse. *See id.* We therefore conclude that the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In summary: (1) the city must withhold report number 90818413 in its entirety and the information we have marked in report number 90913838 under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) the city must withhold the remaining information we have marked under section 552.101 in conjunction with section 261.201(a) of the Family Code. The rest of the submitted information must be released.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 371745

Enc: Submitted documents

c: Requestor
(w/o enclosures)