



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 9, 2010

Ms. Luz E. Sandoval Walker  
Assistant City Attorney  
El Paso City Prosecutor's Office  
810 East Overland Avenue  
El Paso, Texas 79901-2516

OR2010-12010

Dear Ms. 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# 389694 (No. 2010-06-07-AG).

The El Paso Police Department (the "department") received a request for information involving a named individual and a specified address and time interval. You state that some of the requested information has been released. You claim that the rest of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code, which 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas 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.

Family Code § 261.201(a), (k)-(l). You contend that report number 09-254013 is confidential under section 261.201. We agree that the information in question was used or developed in an investigation of alleged or suspected child neglect, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(4) (defining “neglect” for purposes of Fam. Code ch. 261). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. We therefore

conclude that report number 09-254013 is generally confidential under section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

In this instance, however, the report in question reflects that the requestor is a parent of one of the three children who are identified as the victims of the alleged or suspected child neglect. Moreover, the requestor is not the person who is alleged to have committed the neglect. Therefore, the department may not withhold report number 09-254013 from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201 also provides, however, that before a record concerning a child can be copied or inspected by the child's parent, managing conservator, or other legal representative 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, managing conservator's, or other legal representative's child must be redacted. *See id.* § 261.201(l)(1). Section 261.201(l) also provides that the identity of the reporting party must be withheld. *See id.* § 261.201(l)(3). In this instance, we are unable to determine whether the requestor is a parent, managing conservator, or other legal representative of the other children who are listed as victims of the alleged or suspected neglect. Accordingly, we must rule conditionally. Thus, to the extent that the requestor is not a parent, managing conservator, or other legal representative of the other two children, the department must withhold their identities, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. To the extent that the requestor is a parent, managing conservator, or other legal representative of the other two children, their identities may not be withheld under section 552.101 in conjunction with section 261.201(l)(1). In either event, the department must withhold the information we have marked that identifies the reporting party under section 552.101 in conjunction with section 261.201(l)(3). The rest of the information in report number 09-254013 must be released to this requestor pursuant to section 261.201(k).<sup>1</sup>

Section 552.101 of the Government Code also encompasses common-law privacy and excepts from disclosure private facts about an individual. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Information is excepted from public disclosure by a common-law right of privacy if the information (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. *Id.* at 685. To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82.

In Open Records Decision No. 393 (1983), this office concluded that generally only that information that either identifies or tends to identify a victim of sexual assault or other

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<sup>1</sup>We note that report number 09-254013 contains confidential information regarding the alleged child victims to which the requestor has or may have a right of access as the children's parent. *See* Fam. Code § 261.201(k). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office. *See* Gov't Code §§ 552.301(a), .302.

sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information, and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

In this instance, report numbers 09-292306 and 08-294321 are related to alleged sexual assaults, and the requestor knows the identity of the alleged victim. We believe that, in this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. We therefore conclude that report numbers 09-292306 and 08-294321 are generally confidential in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

We note, however, that the requestor appears to be the spouse of the named individual whose privacy interests are implicated in this instance. As such, the requestor may be the individual's authorized representative. As such, the requestor would have a right of access under section 552.023 of the Government Code to any information that the department would ordinarily be required to withhold to protect the individual's common-law right to privacy.<sup>2</sup> *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, if he is the individual's authorized representative, then report numbers 09-292306 and 08-294321 may not be withheld from this requestor on privacy grounds under section 552.101 of the Government Code and must be released.<sup>3</sup> But if the requestor is not the named individual's authorized representative, then report numbers 09-292306 and 08-294321 must be withheld in their entirety under section 552.101 in conjunction with common-law privacy.

Lastly, we address your claim under section 552.108 of the Government Code for report number 10-026214. 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). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state

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<sup>2</sup>Section 552.023 provides in part that “[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.” Gov't Code § 552.023(a).

<sup>3</sup>We note that sections 552.130 and 552.147 of the Government Code are applicable to some of the private information that pertains to the named individual. As sections 552.130 and 552.147 protect personal privacy, the requestor would also have a right of access under section 552.023 to information encompassed by those exceptions.

that the release of report number 10-026214 would interfere with an ongoing investigation. Based on your representation, we conclude that section 552.108(a)(1) is generally applicable in this instance. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. The department must release basic offense and arrest information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the remaining information in report number 10-026214 under section 552.108(a)(1).

In summary: (1) the department must withhold the marked identities of the children in report number 09-254013 under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code, to the extent that the requestor is not a parent, managing conservator, or other legal representative of the children; (2) the department must withhold the marked information in report number 09-254013 that identifies the reporting party under section 552.101 in conjunction with section 261.201(l)(3) of the Family Code; (3) the remaining information in report number 09-254013 must be released to this requestor pursuant to section 261.201(k) of the Family Code, including the marked identities of the children to the extent that the requestor is their parent, managing conservator, or other legal representative; (4) the department must withhold report numbers 09-292306 and 08-294321 in their entirety under section 552.101 in conjunction with common-law privacy, unless the requestor has a right of access to the named individual's private information as her authorized representative under section 552.023 of the Government Code; and (5) the department may withhold report number 10-026214 under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c).<sup>4</sup> The rest of the submitted information must be released.

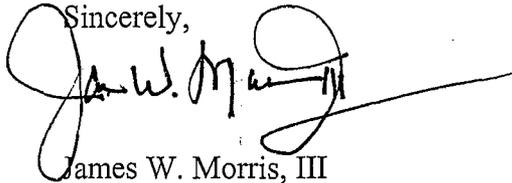
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>4</sup>We note that the basic information includes the arrested person's 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. The requestor has a right, however, to the arrested person's social security number if he is her authorized representative. See generally Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

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,

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 extending to the right.

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

JWM/em

Ref: ID# 389694

Enc: Submitted documents

c: Requestor  
(w/o enclosures)