



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2010

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2010-12360

Dear Ms. Camp-Lee:

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# 390513.

The Round Rock Police Department (the "department") received a request for all written documentation on case number 03-0805-0010. You claim marked portions of the submitted records are excepted from disclosure under sections 552.101 and 552.130 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 section 261.201 of the Family Code, which provides in part:

(a) Except as provided by Section 261.203, the 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 [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:

...

(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.¹

Family Code § 261.201(a), (k), (l). Upon review, we find the submitted records were used or developed in an investigation of suspected child abuse under chapter 261 of the Family Code, and therefore fall within the scope of section 261.201(a). *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Thus, the submitted records are generally confidential under section 261.201 of the Family Code. We note, however, the requestor is the mother of the suspected child victims listed in the report, and is not alleged to have committed the suspected abuse. Accordingly, these records may not be withheld from this requestor under section 261.201(a). *Id.* § 261.201(k). However, section 261.201(1)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Accordingly, the department must withhold the identifying information of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. Further, section 261.201(1)(2) states that before a parent may inspect or copy a record concerning the child, any information that is excepted from required disclosure under the Act or other law may still

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

be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider your remaining arguments under sections 552.101 and 552.130 of the Government Code for the submitted records.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The types of information considered intimate or 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. *See id.* at 683. We agree most of the information you marked in yellow under section 552.101 is highly intimate or embarrassing. The information at issue, however, reveals details about an alleged crime. The public has a legitimate interest in knowing the general details of a crime. *See generally Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994)); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-187 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (public has legitimate interest in details of crime and police efforts to combat crime in community). Accordingly, we find the information you marked in yellow is not confidential under common-law privacy and may not be withheld under section 552.101 on that basis.

You assert the information you marked in red is criminal history record information (“CHRI”) which is confidential under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is subject to section 552.101. 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.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS 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. Upon review, we agree the department must

withhold the CHRI you marked in red under section 552.101 in conjunction with chapter 411.

You assert some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. *Id.* § 552.130. Therefore, we agree the information you marked in green, and the additional information we marked, must be withheld under section 552.130.

We note, however, you also redacted Texas driver's license and license plate numbers pursuant to Open Records Decision No. 684 (2009), which authorizes the withholding of Texas driver's license and license plate numbers under section 552.130 without the necessity of requesting an attorney general decision. Section 552.130 protects personal privacy. In this instance, the requestor is one of the individuals whose privacy interests are implicated. Thus, the requestor has a right of access to her own Texas motor vehicle record information and it may not be withheld from her under section 552.130. *See id.* § 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); Open Records Decision Nos. 684 at 12, 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the department must release the requestor's driver's license number, which we marked, to the requestor.

You also redacted social security numbers under section 552.147 of the Government Code. 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. Gov't Code § 552.147. However, the requestor has a right of access to her social security number, which we marked, and it must be released to her. *See generally id.* § 552.023(b).

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The department must withhold the information you marked in red under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The department must withhold the information you marked in green, and the additional information we marked, under section 552.130 of the Government Code. The remaining information must be released to this requestor.²

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.

²You state you redacted a credit card number pursuant to Open Records Decision No. 684, which authorizes the withholding of a credit card number under section 552.136 without the necessity of requesting an attorney general decision.

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/em

Ref: ID# 390513

Enc. Submitted documents

c: Requestor
(w/o enclosures)