



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2010

Mr. Jose Hernandez
Records Clerk
Edinburg Police Department
1702 South Clossner Boulevard
Edinburg, Texas 78539

OR2010-12518

Dear Mr. Hernandez:

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# 390684 (Reference # 10806).

The Edinburg Police Department (the "department") received a request for report number 10-28061. We note you have marked a social security number for redaction pursuant to section 552.147 of the Government Code.¹ You claim that portions of the submitted information 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 as follows:

(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

¹Section 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.

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.

(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 find the submitted report was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for the purposes of chapter 261 of the Family Code). Accordingly, we find the submitted report is generally confidential under section 261.201 of the Family Code.

However, the requestor is the parent of the child victim listed in the report, and the parent is not alleged to have committed the suspected abuse. In this instance, the department may not use section 261.201(a) to withhold this report from this requestor. *Id.* § 261.201(k). Section 261.201(1)(3) 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 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. Additionally, section 261.201(1)(2) states the department must redact any information that is excepted from required disclosure under the Act or other law. *Id.* § 261.201(1)(2). You assert portions of the submitted report are excepted from public disclosure under sections 552.101 and 552.130 of the Government Code. Accordingly, we will consider the applicability of these exceptions to the remaining information.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if it (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 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. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, the remaining information you have marked consists of the identifying information of the suspect in the report at issue. Upon review, we find the identity of a suspect is not highly intimate or embarrassing and is of legitimate public concern. *See 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))). Accordingly, the department may not withhold any portion of the remaining information under section 552.101 on the basis of common-law privacy.

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130(a). Therefore, the department must withhold the Texas motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code.² However, no portion of the remaining information you have marked

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.

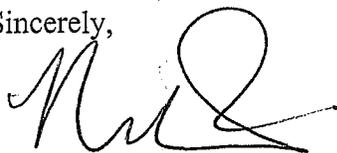
consists of Texas motor vehicle information for the purposes of section 552.130. Accordingly, the department may not withhold the remaining information you have marked on that basis.

In summary, the department must withhold the information we have 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 we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.130 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 390684

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

³We note the information being released contains confidential information regarding the alleged child victim to which the requestor has a right of access as the child'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.