



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 30, 2010

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

OR2010-13153

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# 391764 (Edinburg Reference #11012).

The Edinburg Police Department (the "department") received a request for a specified police report. You claim that 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 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 section encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, 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:

(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). You indicate that the submitted information consists of files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Based on your representation and our review of the submitted information, we find that the submitted information pertains to two separate investigations of alleged child abuse or neglect.

A portion of the information involves an ongoing investigation under chapter 261 of the Family Code conducted by the Child Protective Services Division of the Texas Department of Family and Protective Services (“CPS”). This information falls within the scope of section 261.201 of the Family Code. In this instance, the requestor is a parent of the alleged child victim who is the subject of the CPS investigation, and the requestor is accused of

committing the alleged neglect. As such, the information related to the CPS investigation, which we have marked, may not be provided to the requestor pursuant to section 261.201(k). *Id.* § 261.201(k) (stating child's parent may not obtain information subject to section 261.201(a) concerning reported abuse or neglect of child if parent is alleged to have committed the abuse or neglect). Accordingly, 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. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Upon further review, we find that the remaining information relates to an investigation by the department under chapter 261 in which the requestor is a parent of the alleged child victim and is not alleged to have committed the suspected abuse. Thus, in this instance, section 261.201(a) may not be used to withhold the remaining information from this requestor. *Id.* § 261.201(k). We note that section 261.201(1)(3) provides that before a parent can copy and inspect a record of a child under 261.201(k), the identity of the party who made the report must be redacted. *Id.* § 261.201(1)(3). Accordingly, the department must withhold the reporting party's identity, which we have marked, under section 552.101 in conjunction with section 261.201(1)(3). Additionally, section 261.201(1)(2) provides that any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(1)(2). Therefore, we will address your claim under section 552.101 of the Government Code in conjunction with common-law privacy.¹

You seek to withhold information pertaining to the suspect under section 552.101 of the Government Code in conjunction with 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 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. *Id.* at 683. Upon review, we find none of the information you have marked is either highly intimate or embarrassing or not of legitimate public interest. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.²

Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department also must withhold the reporting party's identity, which we

¹Section 552.101 also encompasses the doctrine of common-law privacy.

²We note that the requestor, as the parent of the minor victim, has a special right of access to information that would ordinarily be withheld to protect the common-law privacy interests of the child. *See* Gov't Code § 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).

have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The remaining submitted information must be released to this requestor.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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 391764

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Should the department receive another request for this same information from a person to whom release is not authorized under section 261.201(k) of the Family Code or section 552.023 of the Government Code, then the department should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.