



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2010

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2010-14989

Dear Mr. Alicie:

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# 395535.

The Baytown Police Department (the "department") received a request for information pertaining to a specified incident. You claim that the submitted 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. Section 552.101 encompasses information protected by other statutes, including section 261.201 of the Family Code, which provides:

(a) 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You generally claim the submitted police report is confidential under section 261.201 of the Family Code. However, the report itself reflects that it pertains to the department's investigation for possession of a controlled substance. Moreover, you have not provided a representation from any other authorized investigating agency that the submitted records were used by that agency in the course of a chapter 261 investigation. *See id.* § 261.301(a) (entities authorized to perform chapter 261 investigations include the Department of Family and Protective Services or a "designated agency"); *see also id.* § 261.001(3) (defining "designated "agency" as any agency designated by the court as responsible for the protection of children). Therefore, the department has failed to establish the applicability of section 261.201 to the submitted report. Accordingly, the department may not withhold the submitted report under section 552.101 in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy 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 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure pursuant to common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We agree the portion of the submitted information you have marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department generally must withhold this information under section 552.101 in conjunction with common-law privacy.

We note, however, the requestor may be the spouse of the individual to whom the information at issue pertains; thus, as the individual's spouse, the requestor may be acting as her authorized representative. Accordingly, if the requestor is the authorized representative of this individual, then he has a right of access to his wife's private information pursuant to section 552.023 of the Government Code, and the department must release this information to him. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). However, if the requestor

is not the authorized representative of the individual at issue, then he does not have a right of access to the individual's private information pursuant to section 552.023, and the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.¹

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,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 395535

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the information being released contains partial social security numbers, which you state you will redact pursuant to section 552.147(b) of the Government Code. Section 552.147(b) 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.