ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2010

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

OR2010-15226

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# 395842 (No. 2010-07-25-AG).

The El Paso Police Department (the "department") received a request for a "30 day roll-up log" of crimes for a specified time interval. We understand that some of the requested information either has been or will be released. You claim that other responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 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 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.

Fam. Code § 261.201(a). You contend that some of the submitted information is confidential under section 261.201. Having reviewed the information at issue, we have marked references to alleged offenses that constitute child abuse for the purposes of section 261.201(a). *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining "child" for purposes of Fam. Code ch. 261). We find that the marked offenses, the street address at which each marked offense occurred, and the remaining information that pertains to each marked offense were used or developed in investigations under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a)(2). 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. Given that assumption, we conclude that the department must withhold the marked offenses, the street addresses at which the marked offenses occurred, and the remaining information that pertains to the marked offenses under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 552.101 of the Government Code also encompasses section 48.101 of the Human Resources Code. Section 48.101 is applicable to information relating to abuse, neglect, or exploitation of elderly and disabled persons in certain facilities and provides in part:

> (a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:
>
> > (1) a report of abuse, neglect, or exploitation made under [chapter 48 of the Human Resources Code];
> >
> > (2) the identity of the person making the report; and
> >
> > (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under [chapter 48 of the Human Resources Code] or in providing services as a result of an investigation.
>
> (b) Confidential information may be disclosed only for a purpose consistent with this [chapter 48 of the Human Resources Code] and as provided by [the Texas Department of Family and Protective Services ("DFPS")] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a)-(b). We note that the only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are the DFPS and certain other state agencies, depending on the circumstances surrounding the incident.[1] *See id.* §§ 48.151, .152, .252, .301. Thus, section 48.101 is generally not applicable to records of an investigation conducted by a police department. You have marked information relating to an offense involving an elderly or disabled person. In this instance, however, the information in question was created by the department. Moreover, we understand that the information in question is related to an investigation conducted by the department. You do not indicate that the DFPS participated in the investigation of the offense involving the elderly or disabled person or that the department has forwarded information relating to its investigation of the offense to the DFPS. Thus, you have not demonstrated that the information relating to the offense was used or developed in an investigation conducted under chapter 48 of the Human Resources Code. *See id.* § 48.101(a)(3). We therefore conclude that the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

Section 552.101 also encompasses constitutional and common-law rights to privacy. Constitutional privacy under section 552.101 encompasses two types of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie,* 765 F.2d at 492).

Common-law privacy under section 552.101 protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation. See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

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[1]In 2005, the Department of Protective and Regulatory Services was renamed the Department of Family and Protective Services. *See* Act of May 29, 2005, 79th Leg., R.S., ch. 268, §§ 1.74, 1.75, 2005 Tex. Gen. Laws 621, 661.

Along with the information relating to the offense involving an elderly or disabled person, we understand you to claim that other marked information is confidential under section 552.101. You have not demonstrated, however, that any of the information at issue falls within any of the constitutional zones of privacy or that any individual's privacy interest outweighs the public's interest in the information. We therefore conclude that the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with constitutional privacy. Likewise, you have not demonstrated that any of the remaining information is highly intimate or embarrassing and a matter of no legitimate public concern. We therefore conclude that the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold the marked offenses, the street address at which each marked offense occurred, and the remaining information that pertains to each marked offense under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. 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.

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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 395842

Enc: Submitted documents

c: Requestor
(w/o enclosures)