



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2010

Chief Gregory L. Grigg
Deer Park Police Department
2911 Center Street
Deer Park, Texas 77536-4942

OR2010-16079

Dear Chief Grigg:

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# 397713 (Deer Park # 32).

The Deer Park Police Department (the "department") received a request for a specified police report. You claim some of the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 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) [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.

....

(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[.]

Fam. Code § 261.201(a), (k), (l). We note the submitted report was used or developed in an investigation of alleged child abuse or neglect. *See id.* §§ 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); 101.003(a) (defining “child” for purposes of section 261.201). Therefore, we find this information is generally confidential under section 261.201 of the Family Code. However, you inform us the requestor is the parent of the child victims listed in the report and is not alleged to have committed the alleged abuse or neglect. Accordingly, the requestor has a right of access to the submitted reports pursuant to section 261.201(k). *See id.* 261.201(k). However, section 261.201(l)(2) provides any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(l)(2).

You raise section 552.108(a)(1) of the Government Code, which excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A

governmental body claiming section 552.108 must reasonably explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You do not state the submitted report pertains to an ongoing criminal investigation or prosecution. Furthermore, you have failed to explain how release of the submitted information would interfere in some way with the detection, investigation, or prosecution of crime. Therefore, you have not met your burden under section 552.108(a)(1). Because you have failed to demonstrate the applicability of section 552.108(a)(1), the department may not withhold any of the submitted report under section 552.108(a)(1) of the Government 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). This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under 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). Upon review, we find a portion of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold this information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

You assert some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We agree the department must withhold the Texas motor vehicle record information you have marked, and the additional information we have marked, under section 552.130.¹

Section 552.147 of the Government Code provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. We agree the department may withhold the social security number you have marked under section 552.147 of the Government Code.²

¹We 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 Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

²Section 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(b).

In summary, 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 Texas motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The department may withhold the social security number you have marked under section 552.147 of the Government Code. The department must release the remaining information 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 397713

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor, as the parent of the children whose information is at issue, has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor, it should again seek a ruling from this office. See Gov't Code §§ 552.301, .302.