



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2010

Ms. Delietrice Henry
Open Records Assistant
Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2010-16528

Dear Ms. Henry:

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# 398602.

The Plano Police Department (the "department") received two requests from the same requestor for information pertaining to two specified incidents. 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. This exception encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant 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.

...

(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)(2). Upon review, we agree report number 2010-00094677 was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *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). Therefore, we find this report is generally confidential under section 261.201 of the Family Code.

However, we note the requestor is the step-parent of the child victim in this report and she is not alleged to have committed the alleged abuse. As such, this requestor may have a right of access to the report at issue pursuant to section 261.201(k). *Id.* § 261.201(k). Thus, if the requestor is not the child victim’s parent, managing conservator, or legal representative, then report number 2010-00094677 must be withheld in its entirety from the requestor under section 552.101 in conjunction with section 261.201 of the Family Code. On the other hand, if the requestor is the child’s parent, managing conservator, or legal representative, the department may not use section 261.201(a) to withhold this report from the requestor. *Id.*

§ 261.201(k). In that instance, section 261.201(l)(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(l)(2). You assert report number 2010-00094677 is excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy and constitutional privacy. Therefore, in accordance with section 261.201(l)(2) of the Family Code, we will consider your remaining arguments under section 552.101 for this report as well as report number 2007-00185558.

Section 552.101 also encompasses the doctrines of common-law and constitutional privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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. *See id.* at 683. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *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. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)).

Upon review, we find some of the information within report number 2007-00185558 is highly intimate or embarrassing and not of legitimate interest to the public. Thus, the department must generally withhold the information we have marked within this report under section 552.101 in conjunction with common-law privacy. As previously noted, however, the requestor is the step-parent of the individual to which the information pertains. As such, she may have a special right of access to information that would ordinarily be withheld to protect her step-child's common-law privacy interests. *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). Therefore, to the extent the requestor is the authorized representative of the individual whose privacy interest is at issue, she has a right of access to the information we have marked within report number 2007-00185558 pursuant to section 552.023 of the Government Code, and it may not be withheld from her pursuant to common-law privacy. To the extent the requestor is not the authorized representative of the individual whose privacy interest is at issue, she does not have a right of access under section 552.023 to the marked information, and the department must withhold it under section 552.101 of the Government Code in conjunction with common-law privacy. We find you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and of no legitimate public concern or falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the department may not withhold any of the remaining information under section 552.101 on the basis of common-law or constitutional privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.¹ Section 552.130 of the Government Code 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. *Id.* § 552.130(a)(1), (2). Thus, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.²

In summary, if the requestor is not the parent, managing conservator, or legal representative of the child at issue in report number 2010-00094677, the department must withhold this report under section 552.101 of the Government Code in conjunction with 261.201 of the Family Code. In the event the requestor is the parent, managing conservator, or legal representative of the child in the report number 2010-00094677, then the department must withhold the Texas motor vehicle record information we have marked in this report under section 552.130 of the Government Code. If the requestor is not the authorized representative of the individual whose privacy interest is at issue in report number 2007-00185558, the department must withhold the information we have marked within this report pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 398602

Enc. Submitted documents

c: Requestor
(w/o enclosures)