



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 21, 2010

Ms. Lysia Bowling  
City Attorney  
City of San Angelo  
P.O. Box 1751  
San Angelo, Texas 76902

OR2010-19210

Dear Ms. Bowling:

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# 403666.

The San Angelo Police Department (the "department") received a request for information pertaining to two specified incidents. You claim 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. Section 261.201(a) of the Family Code provides as follows:

(a) [T]he 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 assert case numbers 2010-0014630 and 2010-0014869 are reports of alleged or suspected child abuse or neglect. *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). We note case number 2010-0014630 consists of a report of alleged family violence assault against an adult. Accordingly we find you have failed to demonstrate that case number 2010-0014630 was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established this information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). Therefore, the department may not withhold the case

number 2010-0014630 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

However, we agree case number 2010-0014869 was used or developed in an investigation of alleged or suspected child abuse or neglect. Accordingly, based on our review, we find case number 2010-0014869 is generally confidential under section 261.201 of the Family Code. We note, however, the requestor is the parent of the child victim listed in this report, and the parent is not alleged to have committed the suspected abuse or neglect. In this instance, the department may not use section 261.201(a) to withhold case number 2010-0014869 from this requestor. *Id.* § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Accordingly, the department must withhold the information we have marked in case number 2010-0014869 under section 552.101 in conjunction with section 261.201(l)(3). Further, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). You raise section 552.101 of the Government Code in conjunction with common-law privacy as an exception to disclosure of case number 2010-0014869. Therefore, will address the applicability of section 552.101 of the Government Code to case number 2010-0014869.

Section 552.101 also encompasses the doctrine of 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The type 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.

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual at issue and the nature of the incident, the entire report must be withheld to protect the individual's privacy. You assert that both case number 2010-0014630 and case number 2010-0014869 must be withheld in their entirety in this instance. However, we find you have not demonstrated, nor does it otherwise appear, that this is a situation where the entirety of these reports must be withheld on the basis of common-law privacy. You also assert the information you have highlighted is subject to common-law privacy. Upon review, we agree that some of the information you have highlighted is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department must withhold the information we have marked in case number 2010-0014630 under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate how the remaining information you have highlighted is highly intimate or

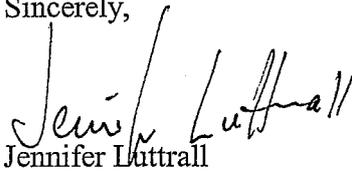
embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining information you have highlighted under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold the information we have marked in case number 2010-0014869 under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The department must also withhold the information we have marked in case number 2010-0014630 under section 552.101 in conjunction with common-law privacy. The remaining information must be released.<sup>1</sup>

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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 403666

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.