



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 10, 2011

Mr. Charles E. Zech  
Denton, Navarro, Rocha & Bernal  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2011-02047

Dear Mr. Zech:

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# 408802.

The Copperas Cove Police Department (the "department"), which you represent, received a request for information related to a specified incident. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> 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 made confidential by other statutes, such as section 261.201 of the Family Code which provides, in relevant part, 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:

---

<sup>1</sup>Although you raise section 558.101 of the Government Code as an exception to disclosure, this exception does not exist. We understand you to raise section 552.101 of the Government Code based on the substance of your arguments.

(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.

(1) 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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (1)(2)-(3). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse conducted by the department. *See id.* §§ 261.001(E) (definition of child abuse includes sexual assault under Penal Code section 22.011); *see also* Penal Code § 21.011(c)(1) (defining “child” for purposes of Penal Code section 22.011 as a person under 17 years of age). Accordingly, we find this information is subject to chapter 261 of the Family Code. We note the requestor is a parent of the child victims listed in the information and is not alleged to have committed the abuse. Thus, pursuant to section 261.201(k), the information at issue may not be withheld from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(1)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with

section 261.201(1)(3) of the Family Code. In addition, section 261.201(1)(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(1)(2). Accordingly, we will consider your remaining argument under section 552.101 for the remaining information.

Section 552.101 of the Government Code 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). In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). This office has also found the identities of juvenile victims of abuse or neglect are excepted from public disclosure under common-law privacy. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Upon review, we find a portion of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information you seek to withhold pertains to the requestor's minor children. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, pursuant to section 552.023, the requestor has a right of access to the information pertaining to her children which would otherwise be confidential under common-law privacy, and the department may not withhold any portion of their information under section 552.101 of the Government Code on that basis.

In summary, the department must withhold the information we have marked 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 under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.<sup>2</sup>

---

<sup>2</sup>We note the information being released contains confidential information regarding the alleged child victims to which the requestor has a right of access as a parent of the child victims. *See* Fam. Code § 261.201(k). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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 Burnett  
Assistant Attorney General  
Open Records Division

JB/vb

Ref: ID# 408802

Enc. Submitted documents

c: Requestor  
(w/o enclosures)