



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 10, 2011

Mr. Jose Hernandez  
Interim Records Supervisor  
Edinburg Police Department  
1702 South Closner Boulevard  
Edinburg, Texas 78539

OR2011-03374

Dear Mr. Hernandez:

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# 411312.

The Edinburg Police Department (the "department") received a request for all reports relating to a named individual from 2008 to 2010. You claim that the submitted information is excepted from disclosure under sections 552.101, 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 information protected by 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 Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family 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). We agree case number 10-25123 was used or developed in an investigation by the department of alleged child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also* Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). Upon review, we find the case number 10-25123 falls within the scope of section 261.201(a) of the Family Code. You do not inform us, and we are not aware, that the department has adopted a rule that governs the release of this type of information; therefore, we assume no such rule exists. Given that assumption, we conclude the department must withhold case number 10-25123 in its entirety under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. *See id.* at 683. This office has also found that 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 agree portions of the remaining information are highly intimate and embarrassing and not of legitimate public concern. However, we note the requestor has submitted an authorization to release information signed by the individual whose private information is at issue and, therefore, this requestor has a special right of access to information pertaining to the named individual that would ordinarily be withheld to protect the individual’s privacy interests. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person or person’s representative to whom information relates on grounds that information is considered confidential under privacy principles). Therefore, no portion of the submitted information may be withheld from this requestor on the basis of common-law privacy.

Section 552.108(a)(1) of the Government Code 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[.]” *Id.* § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the reports you have marked pertain to a pending prosecution with the Hidalgo County District Attorney’s Office. Based on your representation and our review, we conclude that release of the information you have marked within these reports would interfere with the detection,

investigation, or prosecution of a crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code is generally applicable to the information you have marked.

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. Basic information includes, among other things, a detailed description of the offense. See Open Records Decision No. 127 (1976). We note you have marked the entire narrative portions of the reports at issue. Consequently, the information being released does not contain information sufficient to satisfy the requirement that a detailed description of the offenses be released as basic information. See *id.* Accordingly, the department must release a sufficient portion of the narrative portions of the reports to encompass a detailed description of the offenses pursuant to *Houston Chronicle*. With the exception of the basic information, the department may withhold the remaining information you have marked under section 552.108(a)(1) of the Government Code.

Next, you assert some of the remaining information is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency. Gov’t Code § 552.130(a)(1), (2). The department must withhold the information you have marked under section 552.130.<sup>1</sup>

Finally, we note you have marked social security numbers in the remaining information, including the named individual’s social security number. 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. However, the requestor, as the named individual’s authorized representative, has a special right of access to this individual’s social security number. See *id.* § 552.023(a). Therefore, the department may not withhold the named individual’s social security number from this requestor. See *id.* § 552.023(b). However, the department may withhold the remaining social security number you have marked under section 552.147 of the Government Code.<sup>2</sup>

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<sup>1</sup>This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including Texas driver’s license numbers, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>We note that section 552.147(b) of the Government Code 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.

In summary, the department must withhold case number 10-25123 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which must include a detailed description of the offense, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code. The department may withhold the social security number that does not belong to the named individual under section 552.147 of the Government Code. The remaining information must be released.<sup>3</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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 411312

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>As previously noted, the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(b). Because such information is confidential with respect to the general public, if the department receives another request for this information from a person other than this requestor, it should again seek a ruling from this office. *See id.* §§ 552.301, .302.