



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2011

Ms. Elaine S. Hengen
Senior Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901

OR2011-04217

Dear Ms. Hengen:

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# 412494 (El Paso case no. 2011-01-24-AG).

The El Paso Police Department (the "department") received two requests from the same requestor for two specified reports involving a named individual. You claim 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. Section 552.101 encompasses information made confidential by other statutes, including 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; and

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

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we find the submitted information consists of police reports used or developed in the department's investigations of alleged or suspected child abuse. *See id.* §§ 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code), 101.003(a) (defining "child" for purposes of section 261.201 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). Accordingly, we determine the submitted reports are within the scope of section 261.201 of the Family Code.

Pursuant to section 261.201(k), an investigating entity generally may not withhold records subject to section 261.201 from a parent who is not suspected of committing the abuse. *See id.* § 261.201(k). Although the requestor is the parent of the child victim listed in report number 05-01049H and is not alleged to have committed the alleged abuse, the child victim in that report is now at least eighteen years old. Thus, we find the requestor no longer has a right of access to her adult child's records under section 261.201(k). *See id.* You do not indicate the department has adopted a rule governing release of this type of information.

Thus, we find report number 05-01049H must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

The child victim listed in report number 04-251383, however, is still under eighteen years old. Additionally, the requestor is the parent of that child victim and is not alleged to have committed the alleged or suspected abuse. Therefore, report number 04-251383 may not be withheld from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(1)(2) states that any information excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(1)(2). We understand you to raise section 552.101 of the Government Code for report number 04-251383, and we note this report contains a Texas driver's license number that is subject to section 552.130 of the Government Code.² Thus, we will consider the applicability of these exceptions to report number 04-251383.

Section 552.101 of the Government Code also encompasses constitutional and common-law rights to privacy. Constitutional privacy under section 552.101 encompasses two types of interests. *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 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

Common-law privacy under section 552.101 protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse

¹As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)

in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

In this instance, you have not provided any arguments explaining how any portion of report number 04-251383 is within any of the constitutional zones of privacy or that any individual's privacy interest outweighs the public's interest in the information. We therefore conclude that the department may not withhold report number 04-251383 under section 552.101 of the Government Code in conjunction with constitutional privacy. Likewise, you have not provided any arguments demonstrating that any portion of report number 04-251383 is highly intimate or embarrassing and a matter of no legitimate public concern. We therefore conclude that the department may not withhold any portion of report number 04-251383 under section 552.101 in conjunction with common-law privacy.

We note section 261.201(l)(3) of the Family Code states the identity of the reporting party must be withheld before information may be released pursuant to section 261.201(k). Fam. Code § 261.201(l)(3). Thus, the department must withhold the identifying information of the reporting party in report number 04-251383 under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). We note that section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own Texas driver's license number under section 552.023 of the Government Code and the department may not withhold it from her under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987). Upon review, we have marked the Texas driver's license number in report number 04-251383 that is subject to section 552.130. The department must withhold this information under section 552.130 of the Government Code.³

In summary, the department must withhold report number 05-01049H under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the identifying information of the reporting party in report number 04-251383 under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. The department must also withhold the Texas driver's license number we marked in report number 04-251383 under section 552.130 of

³Open Records Decision No. 684 (2009) is 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, without the necessity of requesting an attorney general decision.

the Government Code. The remaining information in report number 04-251383 must be released.⁴

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 412494

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴Because this requestor has a special right of access to information in report number 04-251383 that would ordinarily be confidential under section 261.201 of the Family Code, the department must again seek a decision from this office if it receives another request for the same information from a different requestor. Additionally, the remaining information in report number 04-251383 includes a social security number. 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. See Gov't Code § 552.147(b).