



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 29, 2011

Mr. Robert Henneke  
Kerr County Attorney  
County Courthouse, Suite BA-103  
700 Main Street  
Kerrville, Texas 78028

OR2011-04322

Dear Mr. Henneke:

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#412737.

The Kerr County Sheriff's Office (the "sheriff") received a request for video recordings of confessions in a specified case. 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 section 261.201 of the Family Code, which provides as follows:

(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:

(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; [and]

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l). Upon review, we find the submitted video recordings were used or developed in an investigation of alleged child abuse or neglect. *See* Fam. Code § 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as a person younger than 17 years of age). Therefore, we find this information is generally confidential under section 261.201 of the Family Code. However, the requestor states he is the attorney for one of the child victims at issue in the investigation. Accordingly, the requestor has a right of access to the submitted video recordings pursuant to section 261.201(k). *See id.* 261.201(k). However, section 261.201(l) provides that before a legal representative can copy and inspect

a record of a child under section 261.201(k), any personally identifiable information about any other victim or witness under 18 years of age must be redacted. *Id.* § 261.201(1)(1). Therefore, the sheriff must withhold from the video recordings any personally identifiable information, including names and addresses, of child victims and witnesses who are not the requestor's client under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code. Furthermore, section 261.201(1)(2) provides any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(1)(2). Thus, we will address your claim under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information if it (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 demonstrated. *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. In addition, this office has found certain 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).

As noted above, the requestor represents a sexual assault victim whose privacy interests are at issue. Therefore, he has a special right of access to information that would ordinarily be withheld to protect the victim's privacy interests. *See* Gov't Code § 552.023(a) (person or 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 is protected from public disclosure by laws intended to protect person's privacy interests). Consequently, the sheriff may not withhold any of the remaining information in the submitted video recordings pertaining to the requestor's client under section 552.101 of the Government Code on the basis of common-law privacy. We note, however, some of the information on the third submitted DVD does not pertain to the requestor's client and is not personally identifiable information about any other victim or witness under 18 years of age. This information refers to psychiatric treatment of mental disorders, medical information, and information indicating disabilities. Upon review, we find this information, which we have noted, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff must withhold this information under section 552.101 in conjunction with common-law privacy.

In summary, the sheriff must withhold from the video recordings any personally identifiable information, including names and addresses, of child victims and witnesses who are not the

requestor's client under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. The sheriff must withhold the information on the third submitted DVD which does not pertain to the requestor's client that is highly intimate or embarrassing and not of legitimate public concern under section 552.101 in conjunction with common-law privacy. The sheriff must release the remaining information to this requestor.<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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 412737

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note the information being released contains confidential information to which the requestor has a right of access. See Fam. Code 261.201(k), Gov't Code § 552.023(a). If the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office.