



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2011

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2011-05699

Dear Mr. Alicie:

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# 415375.

The Baytown Police Department (the "department") received nine requests from the same requestor for nine specified police reports. You state you have released some information to the requestor. You indicate social security numbers will be redacted from the responsive information pursuant to section 552.147 of the Government Code.¹ You claim other responsive 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, such as section 261.201(a) of the Family Code, which provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

¹Section 552.147(b) 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. Gov't Code § 552.147(b).

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.

Fam. Code § 261.201(a). Upon review, we agree that case numbers 2010-5875, 2010-14498, and 2010-14960 were used or developed in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of chapter 261), 261.001(4) (defining “neglect” for purposes of chapter 261). Thus, we find that case numbers 2010-5875, 2010-14498, and 2010-14960 are within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule governing the release of this type of information, and we therefore assume no such rule exists. Given that assumption, the department must withhold case numbers 2010-5875, 2010-14498, and 2010-14960 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.²

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). The types of information considered intimate and 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 that some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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 find the information you have marked in case number 2009-54536 and most of the information you have marked in case number 2010-14506 is highly intimate or embarrassing and not of legitimate public interest. Thus, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate that the remaining information you have marked in case number 2010-14506

²As our ruling on this issue is dispositive, we do not address your remaining argument against disclosure of this information.

is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of this information, which we have marked for release, may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold case numbers 2010-5875, 2010-14498, and 2010-14960 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the information you have marked in case number 2009-54536 and, except for the information we have marked for release, the information you have marked in case number 2010-14506. The remaining information must be released.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 415375

Enc. Submitted documents

c: Requestor
(w/o enclosures)