



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2011

Mr. Steven M. Peña, Sr.
Law Offices of Davidson & Troilo
700 West IH-10, Suite 800
San Antonio, Texas 78229-5815

OR2011-08843

Dear Mr. Peña:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 422081.

The City of Helotes Police Department (the "department"), which you represent, received a request for report number 11-0273 and information pertaining to named parties at a certain address for a specified period of time. The department argues report number 11-0273 is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. To the extent the rest of the requested information exists, we assume the department has released it as the department has not objected to its release. *See* Gov't Code §§ 552.301, .302. We have considered the department's claimed exceptions and have 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." *Id.* § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the 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 . . . 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 Chapter 552, Government Code [.]

Fam. Code § 261.201(a), (k), (l)(1)-(2). Upon review, we find the submitted information pertains to an investigation of child abuse. *See id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” 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). Therefore, the submitted information is confidential under section 261.201(a) of the Family Code.

In this instance, however, the department states the requestor is the mother of the child victim and is not alleged to have committed the suspected abuse. Thus, the department acknowledges it may not withhold the information from this requestor pursuant to section 261.201(a). *Id.* § 261.201(k). However, section 261.201(1)(2) states any information otherwise excepted from required disclosure under the Act or other law must also be withheld from disclosure. *Id.* § 261.201(1)(2). Therefore, we consider the department's section 552.103 argument.

Section 552.103 of the Government Code provides in part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The department has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that 1) litigation is pending or reasonably anticipated, and 2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The department must meet both prongs of this test for information to be excepted under section 552.103(a).

The department states the information relates to a pending criminal investigation and has been referred to the prosecutor for the filing of charges. However, the department is not a party to the criminal prosecution. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990). In such a situation, we require an affirmative representation from the governmental body with the litigation interest, such as a district attorney or local prosecutor, requesting to withhold the information from disclosure under section 552.103. Because the department has not provided such a representation, it may not withhold the information under section 552.103.

Next, the department seeks to withhold the victim's identifying information under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if 1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and 2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. 540 S.W.2d at 683. We agree the victim's identifying information is private because it is highly intimate or embarrassing and is not of legitimate public interest. However, because the requestor is the child victim's parent, she has a special right of access to such information under section 552.023 of the Government Code. Section 552.023 provides a person's authorized representative a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests. Gov't Code § 552.023. Thus, the department may not withhold the information from this requestor pursuant to common-law privacy.

Lastly, we note the information contains a Texas driver's license number, which is subject to section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information relating to a Texas driver's license. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Thus, the department must withhold the Texas driver's license number we have marked under section 552.130.¹

In summary, the department must withhold the marked Texas driver's license number under section 552.130 of the Government Code and release the remainder to this requestor.²

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

¹We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold a Texas driver's license number under section 552.130 without the necessity of requesting an attorney general decision.

²Because the requestor has a special right of access to this information under section 261.201(k) of the Family Code and section 552.023 of the Government Code, if the department receives a future request for this information from an individual other than the requestor, the department should again seek our decision.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 422081

Enc: Marked documents

c: Requestor
(w/o enclosures)