



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 27, 2011

Ms. Jenny Gravley  
Taylor Olson Adkins Sralla Elam L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2011-10808

Dear Ms. Gravley:

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# 425234.

The Euless Police Department (the "department"), which you represent, received a request for a copy of offense report number 11-23882. You claim some of the requested 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 that other statutes make confidential, such as 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 Chapter 552, Government Code, 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 report was used or developed in an investigation of alleged child abuse. *See id.* §§ 101.003(a) (defining “child” for purposes of this section 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Accordingly, we find the report is generally confidential under section 261.201 of the Family Code.

However, the requestor is a parent of the child victim listed in the report, and the requestor is not suspected of having committed the alleged abuse. In this instance, the department may not use section 261.201(a) to withhold the report at issue from this requestor. *Id.* § 261.201(k). Section 261.201(l)(3), however, states the identity of the reporting party must be withheld when releasing information under section 261.201(k). *Id.* § 261.201(l)(3). Therefore, the department must withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 met. *See id.* at 681-82. The type 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. This office has also found 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).

The submitted report concerns a sex-related offense. Generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* ORD 393, 339; *see also* ORD 440 (detailed descriptions of serious sexual offenses must be withheld); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). As noted above, the requestor is the parent of the child victim whose privacy interest is at issue. *See* Gov't Code § 552.023(a) (“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 that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, the requestor has a right of access to information pertaining to her child that would otherwise be confidential under common-law privacy. Accordingly, the department may not withhold information about the child from this requestor under section 552.101 on the basis of common-law privacy.

The submitted report also contains medical information about an individual other than the child victim. This information is highly intimate or embarrassing and not of legitimate interest to the public. Thus, the department must withhold this information, which we have marked, under section 552.101 on the basis of common-law privacy.

Finally, we note the submitted report contains a driver’s license number that is subject to section 552.130 of the Government Code. Section 552.130 provides information relating to

a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state, another state, or country is excepted from public release. Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Accordingly, the department must withhold the marked driver's license number under section 552.130.<sup>1</sup>

In summary, the department must withhold the identity of the reporting party we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The department must withhold the marked medical information under section 552.101 of the Government Code on the basis of common-law privacy. The department must withhold the marked driver's license number under section 552.130 of the Government Code. The remaining information must be released to this requestor.<sup>2</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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold 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>Because the requestor has a right of access to information being released, the department must again seek a decision from this office if it receives a request for the same information from a different requestor.

Ref: ID# 425234

Enc. Submitted documents

c: Requestor  
(w/o enclosures)