



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2011

Mr. Mark G. Daniel
Evans, Daniel, Moore, Evans & Lazarus
For City of Watauga
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2011-16429

Dear Mr. Daniel:

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# 435668 (Watauga PIA request #11-411).

The Watauga Police Department (the "department"), which you represent, received a request for a specified incident report. You claim that 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 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(a) of the Family Code.¹ Section 261.201 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

¹We note that although you raise section 261.203 of the Family Code, section 261.201 is the proper exception to raise for this type of information.

(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). You claim that the submitted information was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1)(E) (defining “abuse” for purposes of chapter 261 of the Family Code as including offense of sexual assault under section 22.011 of the Penal Code). Although section 101.003(a) of the Family Code defines a “child” for purposes of section 261.201 as a “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,” *id.* § 101.003(a), we note the Penal Code defines a “child” for purposes of section 22.011 as “a person younger than 17 years of age who is not the spouse of the actor.” Penal Code § 22.011(c)(1). We find, when read together, sections 261.001(1)(E) of the Family Code and 22.011(c)(1) of the Penal Code proscribe that sexual abuse of a child under chapter 261 requires the child be under the age of 17. Therefore, because the victim listed in the submitted information is seventeen years old, we cannot conclude any of the submitted information consists of a report of or was used or developed in an investigation of child abuse under chapter 261 of the Family Code. Thus, section 261.201 of the Family Code is inapplicable to the submitted information, and it may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The submitted report indicates the suspect was between the ages of sixteen and seventeen at the time the

incident was reported. Therefore, we are unable to determine the age of the suspect at issue, and we must rule conditionally. To the extent the submitted information constitutes a record of a juvenile suspect engaged in delinquent conduct who is ten years of age or older and under seventeen years of age at the time of the commission of the crime, it is confidential pursuant to section 58.007 of the Family Code and must be withheld under section 552.101 of the Government Code. However, to the extent this information pertains to a suspect who is not ten years of age or older and under seventeen years of age at the time of the commission of the crime, the department may not withhold it under section 552.101 on the basis of section 58.007. In that case, we will consider whether this information may be withheld under any other exception to disclosure.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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.

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. 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* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The submitted information reveals the requestor knows the identity of the victim. Thus, withholding only the victim's identifying information from the requestor would not preserve the victim's common-law right to privacy. However, the requestor is a parent of the individual whose privacy interests are at issue, and may be this individual's authorized representative. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). Because we are unable to determine whether the requestor is the authorized representative of the individual whose privacy interests are at issue, we must rule conditionally. If the requestor is not the authorized representative of the individual, then the submitted report must be withheld in its entirety under section 552.101 in conjunction with common-law privacy. If the requestor is the authorized representative of the individual, she has a right of access to information pertaining to the individual that would otherwise be confidential under common-law privacy, and the submitted information may not be withheld under section 552.101 on that basis.

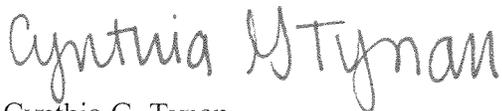
In summary, to the extent the information constitutes a record of a juvenile suspect engaged in delinquent conduct who is ten years of age or older and under seventeen years of age at the time of the commission of the crime, the department must withhold the submitted

information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Otherwise, if the requestor is not the authorized representative of the individual whose privacy rights are at issue, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is the authorized representative of her child, then the department must release the information to the 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 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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 435668

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a special right of access to the information being released in this instance. See Gov't Code § 552.023. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, then the department should again seek a ruling from this office.