



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2011

Ms. Erin A. Higginbotham
Denton, Navarro, Rocha & Bernal, P.C.
2500 West William Cannon Suite 609
Austin, Texas 78745

OR2011-18615

Dear Ms. Higginbotham:

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# 439520.

The City of Copperas Cove (the "city"), which you represent, received a request for a specified police report.¹ You state some of the requested information will be released. You claim the rest of the requested information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the information you submitted.

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 exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

¹You inform us, and have provided documentation confirming, the city requested and received clarification of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (when governmental entity, acting in good faith, requests clarification or narrowing of unclear or over-broad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²Although you also raise section 552.022 of the Government Code, we note this section is not an exception to disclosure. Section 552.022 lists 18 categories of information that are subject to required public disclosure unless the information is confidential under the Act or other law or is encompassed by section 552.022(a)(1) but excepted from disclosure under section 552.108 of the Government Code. *See* Gov't Code § 552.022(a)(1).

(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;

(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). We find the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to be generally confidential under section 261.201(a). *See id.* §§ 261.001(1) (defining “abuse,” for purposes of Fam. Code ch. 261, as including offense of aggravated sexual assault under Penal Code § 22.021); Penal Code § 22.011(c) (defining “child” for purposes of Penal Code § 22.021). In this instance, however, the requestor is a parent of the child who was the victim of the alleged or suspected abuse, and the requestor is not accused of committing the abuse. Therefore, the city may not withhold the submitted information from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k).

Section 261.201(l)(1) provides, however, that any personally identifiable information regarding a victim or witness under 18 years of age who is not the requestor’s child must be withheld from disclosure. *See id.* § 261.201(l)(1). Section 261.201(l)(3) provides that the identity of the reporting party must be withheld. *See id.* § 261.201(l)(3). We have marked information in the submitted documents that identifies a juvenile victim and a juvenile witness who are not the requestor’s children. The city must withhold that information under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Government Code. We also have marked information in the documents that identifies the reporting party. The city must withhold that information under section 552.101 in conjunction with section 261.201(l)(3). We note the videos submitted as Exhibits G-1 through G-5 contain information that identifies the juvenile victim and the juvenile witness who are not the requestor’s children and the reporting party. You inform us the city does not have the capability to redact that information from the videos. Based on your representation, we conclude the city must withhold the submitted videos in their entirety under section 552.101 in conjunction with section 261.201(l)(1) and (3). Additionally, section 261.201(l)(2) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 261.201(l)(2). Accordingly, we will consider your other claim under section 552.101 of the Government Code.

You also claim section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common law privacy, both elements of this test must be established. *Id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked information in the submitted documents that is highly intimate or embarrassing and not a

matter of legitimate public interest. The city must withhold that information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses information other statutes make confidential. Medical records are confidential under the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). In this instance, the submitted medical records involve two children, one of whom is the requestor’s child. A minor’s medical records may only be released on a parent’s or legal guardian’s signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). The medical records we have marked must be withheld under section 159.002 of the MPA unless the city receives written consent for release of the records that complies with sections 159.004 and 159.005 of the MPA.

Lastly, we note section 552.137 of the Government Code is applicable in this instance.³ Section 552.137 states that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c). Gov’t Code § 552.137(a)-(c). The city must withhold the e-mail

³This office will raise section 552.137 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

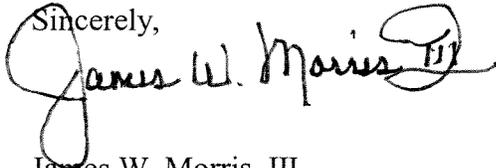
address we have marked under section 552.137 of the Government Code unless the owner affirmatively consents to its public disclosure.⁴

In summary, the city must withhold (1) the information we have marked and the submitted videos under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) and (3) of the Family Code; (2) the information we have marked under section 552.101 in conjunction with common-law privacy; (3) the marked medical records under section 159.002 of the MPA unless the city receives the required consent for release; and (4) the marked e-mail address under section 552.137 of the Government Code unless the owner affirmatively consents to its public disclosure.⁵ The rest of the submitted 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/dls

⁴We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including an e-mail address of a member of the public under section 552.137 of the Government Code.

⁵We note the remaining information includes social security numbers. Section 552.147(b) of the Government Code 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.

Ref: ID# 439520

Enc: Submitted documents

c: Requestor
(w/o enclosures)