



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 27, 2012

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

OR2012-01379

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# 443659.

The Baytown Police Department (the "department") received a request for the report pertaining to case number 1998-48809. You state the department will redact social security numbers and partial social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim 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 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 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 [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:

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<sup>1</sup>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. *See* Gov't Code § 552.147(b).

(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). You represent the submitted information was used or developed in the department's investigation of alleged child abuse. *See id.* § 261.001(1)(E) (defining "abuse" for purposes of chapter 261 as including offense of indecency with a child under Penal Code section 21.11), *see also* Penal Code § 22.011(c)(1) (defining "child" for purposes of Penal Code section 22.021 as person under 17 years of age). Accordingly, we find the submitted information is subject to section 261.201.

However, the requestor may be the authorized representative of the child victim's mother, who is not alleged to have committed the alleged abuse. As such, this requestor may have a right of access to the submitted information pursuant to section 261.201(k). *See* Fam. Code § 261.201(k). Because we are unable to determine whether the requestor is the authorized

representative of the child victim's mother, we rule conditionally. If the requestor is not the authorized representative of the child victim's mother, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the requestor is the authorized representative of the child victim's mother, then the department may not use section 261.201(a) to withhold the submitted information from this requestor. *See id.* Section 261.201(l)(3), however, provides that before a parent can copy and inspect a record of a child under section 261.201(k), the identity of the party who made the report must be redacted. *See id.* § 261.201(l)(3). Accordingly, the department must withhold the identifying information 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. However, we find the remaining information you have marked under section 261.201(l)(3) does not identify the reporting party for purposes of this section. Therefore, this information may not be withheld under section 552.101 in conjunction with section 261.201(l)(3). We note, however, that section 261.201(l)(2) also provides that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, because you also raise section 552.101 in conjunction with common-law privacy for the submitted information, we will consider the applicability of this claim.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (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). In this instance, the submitted information pertains to a sex-related offense. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body must generally withhold all of the information pertaining to a sexual assault when the requestor knows the identity of the alleged sexual assault victim. *See* ORD 393. As noted above, the requestor may be the authorized representative of the child victim's mother. The parent of a child is the child's authorized representative. Under section 552.023 of the Government Code, "a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023; *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Thus, if the requestor is the authorized representative of the child victim's mother, the requestor has a right of access to the submitted information. Accordingly, the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the requestor is not the authorized representative of the child victim's mother, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

However, if the requestor is the authorized representative of the child victim's mother, the department may not withhold the submitted information from the requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The remaining information must be released.<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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/agn

Ref: ID# 443659

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note that because the requestor may have a right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from a requestor without such a right of access.