



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2012

Chief Gregory L. Grigg
Chief of Police
City of Deer Park
2911 Center Street
Deer Park, Texas 77536-4942

OR2012-04072

Dear Chief Grigg:

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# 448067 (Request No. 141).

The Deer Park Police Department (the “department”) received a request for two specified reports. You claim 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 section 261.201 of the Family Code, which provides in relevant part 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

(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 assert the submitted information is excepted from disclosure under section 261.201. We note the submitted information does not involve allegations of child abuse or neglect for purposes of chapter 261. Upon review, we find you have not demonstrated that this information consists of a report of alleged or suspected child abuse or neglect made under chapter 261 or was used or developed in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of the Family Code). Accordingly, we conclude the submitted information is not confidential under section 261.201 of the Family Code, and it may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate or 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual’s privacy. In this instance, you have failed to demonstrate this is a situation in which the entirety of the submitted information must be withheld on the basis of common-law privacy. Therefore, the department may not withhold these records in their entirety under section 552.101 of the Government Code on that basis.

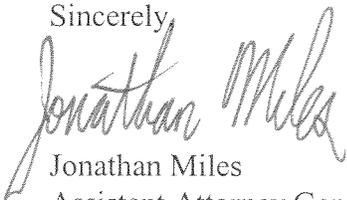
This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must generally withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, that the requestor may be the individual whose privacy interests are implicated or the authorized representative of that individual. We must therefore rule

conditionally. If the requestor is not the individual, or the representative of the individual, whose privacy interests are implicated, then the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and release the remaining information. If the requestor is the individual or the authorized representative of the individual whose privacy interests are implicated, then the department may not withhold the marked information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. In that case, 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



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 448067

Enc. Submitted documents

c: Requestor
(w/o enclosures)