



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2012

Ms. Sol M. Cortez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2012-04853

Dear Ms. Cortez:

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# 449549.

The El Paso Police Department (the "department") received a request for all information related to a specified incident. You claim the submitted information is excepted from disclosure pursuant to 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 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 [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find a portion of the submitted information, which we have marked, consists of a report of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1) (E) (“abuse” for purposes of chapter 261 of Family Code includes indecency with child under Penal Code section 21.11). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). The victims listed in the remaining information at issue were seventeen years old at the time of the offenses. 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,” Fam. Code § 101.003(a), we note the Penal Code defines a “child” for purposes of indecency with a child as an individual younger than seventeen years of age. *See* Penal Code § 21.11(a). Thus, when read together, section 261.001(1)(E) of the Family Code and section 21.11(a) of the Penal Code prescribes sexual abuse of a child under chapter 261 requires the child be under the age of seventeen. Therefore, we cannot conclude any of the remaining information at issue consists of a report that was used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the common-law right of privacy. Common-law privacy 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has concluded 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. Open Records Decision No. 393 at 2 (1983); *see also 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). Upon review, we determine the identifying information of two of the alleged victims, which we have marked, is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, the requestor is a parent of the two remaining minors with privacy interests in the information at issue. Thus, the requestor has a special right of access to information that would ordinarily be withheld to protect the minors’ common-law privacy, and such information cannot be withheld from her on that basis. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to

whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Accordingly, the department may not withhold any of the remaining information from this requestor under section 552.101 on the basis of common-law privacy.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and common-law privacy. The department must release the remaining information.¹

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 449549

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987). If the department receives another request for this information from a different requestor, then the department should again seek a decision from this office.