



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2012

Ms. Kristen Hamilton
Mr. Robert Almonte
Assistant City Attorneys
City of El Paso
2 Civic Center Plaza 9th Floor
El Paso, Texas 79901

OR2012-05114

Dear Ms. Hamilton and Mr. Almonte:

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# 450494.

The El Paso Police Department (the "department") received two requests from the same requestor for information related to a specified case number. You state the department has no responsive video or photographs.¹ You also state information responsive to the first request has been released. You claim other responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We note some of the submitted information, which we have marked, was created after the department received these requests. As previously noted, the Act does not require the department to release information that did not exist when it received these requests. Thus, the marked information is not responsive to these requests. Therefore, this decision does not address the public availability of the marked information, which need not be released in response to these requests.

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

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Code § 552.101. This exception encompasses information other statutes make confidential. Section 261.201 of the Family Code provides in 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:

(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.

...

(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.

Family Code § 261.201(a), (k)-(l). We conclude the submitted information was used or developed in an investigation of alleged or suspected child abuse, so as to be generally confidential under section 261.201(a) of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code as including offense of indecency with a child under Penal Code § 21.11); Penal Code § 21.11(a) (defining “child,” for purposes of offense of indecency with a child, as being child under 17 years of age). In this instance, however, the requestor identifies himself as a legal representative of three of the victims of the alleged child abuse, and the requestor is not accused of committing the alleged abuse. Therefore, pursuant to section 261.201(k), the department may not withhold the information at issue from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k).

Section 261.201(l) provides, however, that before a record concerning a child can be copied or inspected by the child’s parent, managing conservator, or other legal representative, any personally identifiable information about a victim or witness under 18 years of age who is not the parent’s, managing conservator’s, or other legal representative’s child must be redacted. *See id.* § 261.201(l)(1). We have marked information that identifies victims or witnesses of the alleged abuse who are not represented by the requestor. The marked information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code to the extent the victim or witness was under 18 years of age at the time of the incident to which the information pertains.

Section 261.201(l) also provides that the identity of the reporting party must be withheld. *See id.* § 261.201(l)(3). We have marked information that identifies the reporting party. The department must withhold that information under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

Lastly, section 261.201(l)(2) provides that any information excepted from disclosure under the Act or other law must be withheld. *See id.* § 261.201(l)(2). The department also claims section 552.101 of the Government Code in conjunction with constitutional and common-law privacy. Constitutional privacy protects two types of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions relating to the “zones of privacy” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education the United States Supreme Court has recognized. *See Fadlo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual’s privacy interest against the public’s interest in the information. *See id.* at 7. Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

Common-law privacy 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). Common-law privacy encompasses the specific types of

information held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d 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 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).

In this instance, the requestor, as the legal representative of three of the victims of the alleged child abuse, has a right of access to any information concerning his clients that the department would otherwise be required to withhold on privacy grounds. See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).² Therefore, the department may not withhold any information concerning the requestor's clients under section 552.101 in conjunction with constitutional or common-law privacy. The department may be required, however, to withhold the identities of other victims of the alleged abuse on privacy grounds. Thus, to the extent any other victims were 18 years of age or older when they were allegedly abused, so that their identities would not be confidential under section 261.201(1)(1) of the Family Code, the department must withhold their identities under section 552.101 of the Government Code in conjunction with common-law privacy. See Open Records Decision Nos. 339 (1983) (identity of victim of sexual assault or other sex-related offense protected by common-law privacy), 393 (same). The department may not withhold any of the remaining information at issue under section 552.101 in conjunction with constitutional or common-law privacy.

We note the remaining information at issue includes a driver's license number. Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country.³ See Gov't Code § 552.130(a)(1). The department must withhold the driver's license number we have marked under section 552.130 of the Government Code.

In summary, the department must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code to the extent it pertains to a victim or witness of the alleged child abuse who was under 18 years of age at the time of the incident to which the information pertains; (2) the marked information that identifies the reporting party under section 552.101 in conjunction with section 261.201(1)(3); (3) the identities of other victims of the alleged abuse under section 552.101 in conjunction with common-law privacy to the extent they were 18

²Section 552.023 provides in part that "[a] person or 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(a).

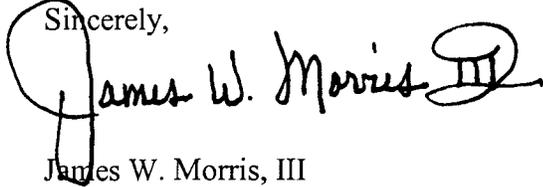
³This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

years of age or older when they allegedly were abused; and (4) the marked driver's license number under section 552.130 of the Government Code.⁴ The rest of the submitted information must be released.⁵

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and "M".

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

JWM/em

Ref: ID# 450494

Enc: Submitted information

c: Requestor
(w/o enclosures)

⁴We 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. The requestor has a right, however, to his clients' social security numbers. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

⁵We note this requestor has a right of access to information the department would be required to withhold from the general public. Should the department receive another request for this same information from a different requestor, the department should resubmit this information and request another decision. *See* Gov't Code §§ 552.301(a), .302.

