



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 12, 2012

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

OR2012-09017

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# 456098.

The Baytown Police Department (the "department") received eleven requests from the same requestor for eleven specified incident reports. You state you have released some of the requested information. We understand you will redact social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have marked portions of the submitted information as not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

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 made confidential by other statutes, such as section 261.201 of the Family Code, which provides in in relevant part:

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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. Gov't Code § 552.147(b).

(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 [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[.]

Fam. Code § 261.201(a), (k), (l)(2). Report numbers 2010-25252, 2010-23341, and 2009-1204 were used or developed in child abuse investigations conducted by the department. *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 this section as 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). Thus, we find report numbers 2010-25252, 2010-23341, and 2009-1204 are within the scope of section 261.201.

In this instance, the requestor is the parent of the child victim listed in report numbers 2010-25252, 2010-23341 and 2009-1204. However, this information reflects that the requestor is alleged to have committed the abuse or neglect in report numbers 2010-23341 and 2009-1204. Therefore, report numbers 2010-23341 and 2009-1204 may not be provided to the requestor pursuant to section 261.201(k). *See id.* § 261.201(k). Accordingly, we find report numbers 2010-23341 and 2009-1204 are confidential under section 261.201(a) of the Family Code and the department must withhold these reports under section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* However, the requestor is not alleged to have committed the suspected abuse or neglect in report number 2010-25252. Thus, pursuant to section 261.201(k), report number 2010-25252 may not be withheld from this requestor on the basis of section 261.201(a). *See Fam. Code § 261.201(k).* However, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider whether report number 2010-25252 is excepted from disclosure under the Act or other law.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Section 58.007 provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under [the Act] or other law.

*Id.* § 58.007(c), (e), (j)(2). Upon review, we find report numbers 2009-2689, 2009-40368, 2010-23423, 2010-21159, and 2010-25252 pertain to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision occurring after September 1, 1997. Thus, these reports are subject to section 58.007. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). However, the requestor is the parent of the juvenile offender listed in the reports subject to section 58.007(c); therefore, report numbers 2009-2689, 2009-40368, 2010-23423, 2010-21159, and 2010-25252 may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 58.007(c). *See id.* § 58.007(e). However, section 58.007(j)(2) provides that information that is otherwise excepted from disclosure must be withheld. *See id.* § 58.007(j)(2). Therefore, because you assert portions of some of these reports are protected by the doctrine of common-law privacy, we must address whether the information at issue is excepted under section 552.101 on that basis. *See id.* § 58.007(j)(2).

Section 552.101 of the Government Code 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). The type of information considered intimate and 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). However, as a parent of the minor with the privacy interest, the requestor has a special right of access to information that would ordinarily be withheld to protect her child's common-law privacy interests, 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 information at issue in report numbers 2009-40368, 2010-26043, and 2010-21159 under section 552.101 on the basis of common-law privacy.

In summary, the department must withhold report numbers 2010-23341 and 2009-1204 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The remaining information must be released to this requestor.<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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 456098

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note that the requestor has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.