



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 30, 2012

Mr. Michael M. Kelly  
Assistant Criminal District Attorney  
Victoria County  
205 North. Bridge Street, Suite 301  
Victoria, Texas 77901

OR2012-13789

Dear Mr. Kelly:

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# 463970.

The Victoria County Sheriff's Department (the "department") received a request for information pertaining to incidents at a specified location for specified time periods and correspondence between the specified location and the department. You state you have released some information to the requestor. You claim some of 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 information made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides:

(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). Upon review, we find some of the submitted information, which we have marked, was used or developed in investigations of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of ch. 261 of Fam. Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201). As such, this information is within the scope of section 261.201 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information; therefore, we assume that none exists. Accordingly, 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) (predecessor statute).

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). Section 58.007 provides in relevant 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.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review, we find some of the remaining information, which we have marked, involves juvenile

delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). It does not appear that any of the exceptions in section 58.007 apply. Therefore, we find the marked information is confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. However, you have failed to demonstrate any portion of the remaining information is confidential under section 58.007; thus, no portion of the remaining information may be withheld under section 552.101 on that basis.

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The type 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. 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). Upon review, we find some of the remaining information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, no portion of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

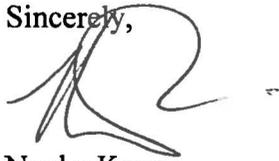
In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 261.201 and 58.007 of the Family Code and common-law privacy. The remaining information must be released.

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](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, appearing to be 'Nneka Kanu', written over a faint circular stamp or watermark.

Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/bhf

Ref: ID# 463970

Enc. Submitted documents

c: Requestor  
(w/o enclosures)