



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2012

Ms. Janet I. Monteros
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2012-14116

Dear Ms. Monteros:

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# 464133 (CA-OP-12-261).

The El Paso County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified case number and two named individuals. You claim 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. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part the following:

- (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 [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 Chapter 552, Government Code, or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)–(l). Upon review, we find the submitted information was used or developed by the sheriff's office in an investigation of alleged or suspected abuse of children. *See id.* § 261.001(1)(E) (definition of child abuse includes continuous sexual abuse of a child under Penal Code section 21.02); *see also* Penal Code § 22.011(c)(1) (defining "child" for purposes of Penal Code sections 21.02 as person under 17 years of age).

Therefore, we find the submitted information is within the scope of section 261.201 of the Family Code. However, the requestor, who is not alleged to have committed the abuse, is a parent of one of the child victims listed in the submitted information. Accordingly, the sheriff's office may not withhold the submitted information from this requestor on the basis of section 261.201(a). Fam. Code § 261.201(k). Section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will address whether the submitted information is excepted from disclosure under the Act or other law.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy protects information about an individual if it (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 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.

In Open Records Decision No. 393 (1983), this office concluded, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *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); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

As previously noted, the requestor is a parent of one of the alleged victims in this case. Thus, the requestor generally would have a special right of access under section 552.023 of the Government Code to information that is excepted from public disclosure under laws intended to protect her child's privacy interests. *See* Gov't Code § 552.023. However, the submitted information also identifies a second child victim, and the requestor knows this victim's identity. The requestor does not have a special right of access to information that implicates the second child victim's privacy interests if she is not that child's managing conservator or legal representative. As we are unable to determine if the requestor is the managing conservator or legal representative of the second alleged victim, we rule conditionally. If the requestor is not the managing conservator or legal representative of the second alleged victim, then we believe withholding only the identifying information of the second child victim from the requestor would not preserve the common-law right to privacy of this victim.

We conclude, therefore, to the extent the requestor is not the managing conservator or legal representative of the second child victim, the sheriff's office must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

To the extent the requestor is the managing conservator or legal representative of the second child victim, we will address whether any portion of the submitted information is excepted from disclosure. Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. Thus, in this situation, we find portions of the submitted information are highly intimate or embarrassing and a matter of no legitimate public interest. Therefore, to the extent the requestor is the managing conservator or legal representative of the second child victim, the sheriff's office must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy.

In addition, as previously noted, section 261.201(l) provides that before a parent, managing conservator, or other legal representative can copy or inspect a record of a child under section 261.201(k), any personally identifiable information about a victim or witness under 18 years of age who is not the child of the parent, managing conservator, or other legal representative, and the identity of the reporting party must be withheld. Fam. Code § 261.201(l)(1), (3). Therefore, if the requestor is the managing conservator or other legal representative of the second child victim, the sheriff's office must also withhold the identities of the child witnesses listed in the report, other than the requestor's children, which we have marked, and the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) and section 261.201(l)(3) of the Family Code, respectively.

In summary, to the extent the requestor is not the managing conservator or legal representative of the second child victim, the sheriff's office must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the requestor is the managing conservator or other legal representative of the second child victim, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. In that situation, the sheriff's office must also withhold the identities of the child witnesses we have marked and the identity of the reporting party we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) and section 261.201(l)(3) of the Family Code, respectively, and release the remaining information.

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, appearing to read "Michelle R. Garza". The signature is fluid and cursive, with the first name "Michelle" being the most prominent part.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 464133

Enc. Submitted documents

c: Requestor
(w/o enclosures)