



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2012

Mr. Kenneth E. East  
Counsel for the Town of Lakeside  
Foster & East  
9001 Airport Freeway, Suite 675  
North Richland Hills, Texas 76180

OR2012-14674

Dear Mr. East:

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# 464960.

The Lakeside Police Department (the "department"), which you represent, received a request for all probable cause affidavits, and incident, arrest, and prosecution reports related to a specified case. You state the department has no information responsive to portions of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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 section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under chapter 552, Government

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

Code, 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). You assert the submitted information was used or developed in an investigation of alleged child abuse. We note the submitted information pertains to an alleged aggravated sexual assault. Section 261.001(E) of the Family Code defines “child abuse” to include aggravated sexual assault of a child under section 22.021 of the Penal Code. *See id.* § 261.001(E). 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,” *id.* § 101.003(a), we note the Penal Code defines a “child” for purposes of section 22.021 as “a person younger than seventeen years of age who is not the spouse of the actor.” Penal Code § 22.011(c)(1). We find, when read together, sections 261.001(1)(E) of the Family Code and 22.011(c)(1) of the Penal Code prescribe sexual abuse of a child under chapter 261 requires the child be under the age of seventeen. In this instance, we are unable to determine the age of the victim in the submitted information. Thus, we must rule conditionally. To the extent the victim in the submitted information was a child as defined by section 22.011(c)(1) at the time of the incident at issue, this information must be withheld in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. To the extent the victim in the submitted information was not a child as defined by section 22.011(c)(1) at the time of the incident at issue, this information may not be withheld under section 261.201. In that instance, we address your remaining arguments against disclosure.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). 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. *See id.* at 683. Generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under

common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* ORD Nos. 393, 339; *see also* ORD 440 (detailed descriptions of serious sexual offenses must be withheld). The submitted information relates to an alleged sexual assault. You seek to withhold the submitted information in its entirety. However, there is no indication in this instance the requestor knows the identity of the alleged sexual assault victim. Further, we note the victim is not identified in the submitted information. Upon review, we find no portion of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the driver's license number we have marked under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). Therefore, the department may withhold the social security number in the submitted information under section 552.147(a) of the Government Code.<sup>2</sup>

In summary, to the extent the victim in the submitted information was a child as defined by section 22.011(c)(1) of the Penal Code at the time of the incident at issue, this information must be withheld in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. To the extent the victim in the submitted information was not a child as defined by section 22.011(c)(1) of the Penal Code at the time of the incident at issue, the department must withhold the driver's license number we have marked under section 552.130 of the Government Code, may withhold the submitted social security number under section 552.147(a) of the Government Code, and must 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.

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<sup>2</sup>We note 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).

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 cursive script, appearing to read "Jennifer Burnett".

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 464960

Enc. Submitted documents

c: Requestor  
(w/o enclosures)