



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2012

Ms. Tiffany N. Colunga
Chief Civil Prosecutor
Criminal District Attorney's Office
Comal County
150 North Seguin, Suite 307
New Braunfels, Texas 78130

OR2012-18022

Dear Ms. Colunga:

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# 472324 (File No. 12-OR-098).

Comal County (the "county") received a request for information pertaining to a specified address during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part, the following:

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

(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.

Fam. Code § 261.201(a), (k). Upon review, we find case number 12-09-0650 was used or developed in an investigation of suspected child abuse. *See id.* §§ 101.003(a) (defining “child” as person under eighteen years of age who is not and has not been married and who has not had disabilities of minority removed for general purposes), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to section 261.201(a). We note the requestor is a parent of the child victim listed in case number 12-09-0650; however, the requestor is the individual accused of committing the alleged child abuse at issue. Thus, case number 12-09-0650 may not be provided to the requestor pursuant to section 261.201(k). *See id.* § 261.201(k) (stating child’s parent may not obtain information subject to section 261.201(a) concerning reported abuse or neglect of child if parent is alleged to have committed abuse or neglect at issue). Accordingly, the county must withhold case number 12-09-0650 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² However, the remaining information does not contain a report of alleged or suspected abuse or neglect made under this chapter, or the identity of the person making such

²As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

a report. Further, you do not explain, and the remaining information does not reflect, how the remaining information relates to files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 or in providing services as a result of such an investigation. Therefore, none of the remaining information is confidential under section 261.201 of the Family Code, and the county may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the common-law right to 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) 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 met. *Id.* at 681-82. Common-law privacy protects the type of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* 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). In Open Records Decision No. 393 (1983), this office concluded, generally, only 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, 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* Open Record Decision Nos. 393 at 2, 339 (1982), 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). Case number C11-10-3689 relates to a sex-related offense. In this instance, the requestor knows the identity of the alleged victim. Therefore, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, to protect the victim's privacy, the county must withhold case number C11-10-3689 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.³

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide documentation from the Comal County Sheriff's Office stating, case number 12-08-1138 relates to a pending criminal investigation and potential prosecution. Based on your representations, we conclude section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ.

³As our ruling for this information is dispositive, we need not address your arguments against its release.

App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. Accordingly, with the exception of basic information, the county may withhold case number 12-08-1138 under section 552.108(a)(1) of the Government Code.⁴

In summary, the county must withhold case number 12-09-0650 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The county must withhold case number C11-10-3689 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Except for basic information, which must be released, the county may withhold case number 12-08-1138 under section 552.108(a)(1) of the Government Code.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

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⁴As our ruling is dispositive for this information, we need not address your remaining arguments against its release, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. See Open Records Decision No. 591 (1991).

Ref: ID# 472324

Enc. Submitted documents

c: Requestor
(w/o enclosures)