



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 11, 2012

Lieutenant William Dietrich
Brownsville Police Department
600 East Jackson Street
Brownsville, Texas 78520

OR2012-19860

Dear Lieutenant Dietrich:

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# 473658.

The Brownsville Police Department (the "department") received a request for information pertaining to case number 10074575 involving a named individual. 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 public 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. Section 261.201 of the Family Code provides as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government 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 argue the submitted information was used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes indecency with a child and sexual assault under Penal Code sections 21.11 and 22.011). The information at issue consists of a report of sexual assault and indecency with a child involving a victim who was seventeen years of age at the time of the offense. 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 minorities removed for general purposes,” *id.* § 101.003(a), we note section 22.011 of the Penal Code defines a “child” as “a person younger than seventeen years of age.” Penal Code § 22.011(c)(1). Further, section 21.11 states the offense of indecency with a child applies if the child victim is younger than seventeen years of age. *See id.* § 21.11(a). We find, when read together, section 261.001(1)(E) of the Family Code and sections 22.011(c)(1) and 21.11 of the Penal Code prescribe sexual abuse of a child and indecency with a child under chapter 261 requires the child be under the age of seventeen. Therefore, because the victim listed in the information at issue was seventeen years old at the time of the offense, we cannot conclude any of the information consists of a report of or was used or developed in an investigation of child abuse under chapter 261 of the Family Code. Thus, the investigation at issue is not confidential pursuant to section 261.201 of the Family Code, and the department may not withhold the information under section 552.101 on that basis.¹

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). In Open Records Decision No. 393 (1983), this office concluded 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. ORD 393 at 2; *see also* Open Records Decision Nos. 440 (1986), 339 (1982); *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). Upon review, we find the submitted information contains the identity of a victim of a sex-related offense. Accordingly, we conclude the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

¹We note section 261.201 is not applicable to an incident that occurred at a child care facility regulated under chapter 42 of the Human Resources Code. *See* Fam. Code § 261.201(h) (section 261.201 of Family Code does not apply to investigation of child abuse or neglect in facility regulated under Human Resources Code chapter 42).

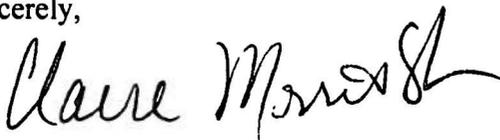
We note the remaining information contains an e-mail address that is subject to section 552.137 of the Government Code.² Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov’t Code § 552.137(a)-(c)*. The e-mail address at issue is not excluded by subsection (c). Therefore, the department must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.³

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The department 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.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

³We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 473658

Enc. Submitted documents

c: Requestor
(w/o enclosures)