



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2013

Ms. Robin J. Chapman
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2013-02853

Dear Ms. Chapman:

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# 479836 (DSHS File No. 21105/2012).

The Texas Department of State Health Services (the "department") received a request for all documents pertaining to a specified case number. You state some information has been or will be made available to the requestor with redactions pursuant to the previous determinations issued in Open Records Decision No. 684 (2009)¹ and Open Records Letter No. 2003-4169 (2003).² You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.³

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

²Open Records Letter No. 2003-4169 was issued to the Texas Commission on Alcohol and Drug Abuse, one of the department's legacy agencies whose powers, duties, and functions, as applicable to the Open Records Letter Ruling, were transferred to the department pursuant to HB 2292, 78th Leg., R.S. (2003).

³We 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 that submitted to this office.

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. Section 552.101 encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which 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 inform us that the information you have marked under section 261.201 relates to an investigation by the department of alleged abuse or neglect of a child in a facility licensed by the department. Based on your representations, we conclude that the marked information at issue was used or developed by the department in conducting an investigation under chapter 261 or in providing services as a result of such an investigation. *See id.* §§ 261.103(a)(3) (requiring that report of suspected abuse or neglect be made to state agency that operates, licenses, certifies, or registers facility in which alleged abuse or neglect occurred), .401(b) (state agency that operates, licenses, certifies, registers, or lists a facility in which children are located or provides oversight of a program that serves children shall make prompt, thorough investigation of report that child has been or may be abused, neglected, or exploited in facility or program), .301(b). Therefore, this information is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.⁴

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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

⁴As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify the victim. *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). Upon review, we agree the department must withhold the information you have marked pursuant to section 552.101 in conjunction with common-law privacy.⁵

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 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, 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 479836

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.