



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 1, 2013

Mr. Matthew B. Cross
Assistant City Attorney
Office of the City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2013-03535

Dear Mr. Cross:

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# 480230 (12-1026-1971/152025).

The El Paso Police Department (the "department") received a request for the complaint report pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 information protected by other statutes, such as section 261.201 of the Family Code, which provides in pertinent part:

(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:

...

(2) any information that is excepted from required disclosure under [the Act], or other law; and

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

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we find the submitted information was used or developed by the department in its investigation of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of Family Code includes indecency with child, sexual assault, and aggravated sexual assault under Penal Code sections 21.11, 22.011, and 22.021); *see also* Penal Code §§ 21.11 (defining “child” for purposes of section 21.11 as minor younger than 17 years of age), 22.011(c)(1) (defining “child” for purposes of sections 22.011 and 22.021 as “a person younger than 17 years of age”), 22.021(b)(1). Accordingly, we conclude the submitted information is within the scope of section 261.201(a).

We note, however, the requestor, who is not alleged to have committed the alleged or suspected child abuse, may be a parent, managing conservator, or other legal representative of one or more of the child victims listed in the submitted information. *See* Fam. Code § 261.201(k). Thus, we must rule conditionally. If the requestor is not a parent, managing conservator, or other legal representative of one or more of the child victims at issue, the department must withhold the submitted information under section 552.101 of the

Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is a parent, managing conservator, or other legal representative of one or more of the child victims, the department may not withhold the submitted information from the requestor under section 261.201(a). *See id.* We note, however, section 261.201(1)(3) provides that the identity of the person who made the report must be redacted. *Id.* § 261.201(1)(3). In addition, the department must redact any information that is otherwise excepted from required disclosure under the Act pursuant to section 261.201(1)(2). *Id.* § 261.201(1)(2). Thus, we will consider your arguments against disclosure of the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You inform us the submitted information relates to a criminal case that did not result in a conviction or deferred adjudication. Based on your representation and our review, we conclude section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). In this instance, the complainant is also the reporting party. As noted above, section 261.201(1)(3) of the Family Code provides that the identity of the person who made the report must be redacted. Fam. Code § 261.201(1)(3). Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.¹ However, in releasing basic information, the department must withhold the reporting party's identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.²

You raise section 552.101 of the Government Code in conjunction with common-law and constitutional privacy for the remaining basic information. Section 552.101 also encompasses the doctrines of common-law and constitutional privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication

¹As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

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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 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. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded that, 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, 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 Records Decision Nos. 440 (detailed descriptions of serious sexual offenses must be withheld), 393 at 2, 339 (1982).

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

In this instance, although you claim the information at issue is protected in its entirety by common-law privacy, you have not demonstrated, nor does it otherwise appear, this is a situation in which any of this information must be withheld in its entirety on the basis of common-law privacy. Furthermore, upon review, we find you have failed to demonstrate how any of the information at issue is highly intimate or embarrassing and of no legitimate concern to the public or falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Accordingly, none of the remaining basic information may be withheld under section 552.101 of the Government Code in conjunction with common-law or constitutional privacy.

In summary, if the requestor is not a parent, managing conservator, or other legal representative of one or more of the child victims at issue, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Otherwise, the department may not withhold this information from the requestor under section 552.101 of the Government Code on that basis. In that instance, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. However, in releasing the basic information, the department must withhold the reporting party's identifying information, which we have marked, under section 552.101 of the Government

Code in conjunction with section 261.201(l)(3) of the Family Code. The department must release the remaining basic information.³

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 480230

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor may have a special right of access to the information being released in this instance. See Fam. Code § 261.201(k). Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.