



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2013

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2013-08073

Dear Mr. Alicie:

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# 487418.

The Baytown Police Department (the "department") received a request for a specified police report. 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 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 of the Family Code, which provides in relevant 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.

Fam. Code § 261.201(a), (k). Upon review, we find the submitted information was used or developed in the department's investigation of alleged child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261 Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of this section 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). Therefore, we conclude this information is subject to section 261.201(a). Although the requestor is a step-parent of the child victim listed in the submitted information, the requestor is the individual accused of committing the alleged child abuse. Thus, regardless of whether the requestor is a parent, managing conservator, or other legal representative of the child at issue, the submitted information may not be provided to the requestor pursuant to section 261.201(k). *See id.* § 261.201(k). However, section 261.201(a) of the Family Code also provides information encompassed by that section may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law[.]" Fam. Code § 261.201(a).

The submitted information includes information obtained from a polygraph examination, access to which is governed by section 1703.306 of the Occupations Code. Section 1703.306 constitutes "applicable state law" for purposes of section 261.201(a). Section 1703.306(a)(1) provides as follows:

A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306(a)(1). In this instance, the requestor is the polygraph examinee. Thus, if the department determines disclosure of the polygraph information is consistent with

chapter 261 of the Family Code, then the department has the discretion to release the requestor's polygraph information, which we have marked, pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (predecessor to section 1703.306 permits, but does not require, examination results to be disclosed to examinees). Although you also raise common-law privacy for this information, a specific statutory right of access prevails over the common law. *Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). If the department determines disclosure of the polygraph information is not consistent with chapter 261 of the Family Code, then the department may not provide the polygraph information to the requestor on that ground, but instead must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 487418

Enc. Submitted documents

c: Requestor
(w/o enclosures)