



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2013

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

OR2013-13088

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# 494771.

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.

Initially, you indicate the information you have marked is not responsive to the instant request. This ruling does not address the public availability of information not responsive to the request, and the department is not required to release such information in response to this request.

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. Section 261.201 of the Family Code provides, in relevant part, 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.

...

(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[.]

Fam. Code § 261.201(a), (k), (l)(2). We note the submitted report was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes sexual assault under Penal Code section 22.011); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.011 as person under 17 years of age). Accordingly, we find this information is subject to chapter 261 of the Family Code. We note the requestor is a step-parent of the child victim listed in the information and he is not alleged to have committed the abuse. As such, this requestor may have a right of access to the information at issue pursuant to section 261.201(k). Fam. Code § 261.201(k). Thus, if the requestor is not the child victim’s parent, managing conservator, or legal representative, or is not acting as the authorized representative of one of these individuals, then the submitted information must be withheld in its entirety from the requestor under section 552.101 in conjunction with section 261.201 of the Family Code. On the other hand, if the requestor is the child victim’s

parent, managing conservator, or legal representative, or is acting as the authorized representative of one of these individuals, the department may not use section 261.201(a) to withhold this information from the requestor. *Id.* § 261.201(k). However, in that event, pursuant to section 261.201(l)(2), the department must redact any information that is otherwise excepted from required disclosure under the Act. *See id.* § 261.201(l)(2). Thus, we will address your argument against disclosure of the submitted information.

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 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. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must 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. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

You seek to withhold the submitted information in its entirety from the requestor under section 552.101 in conjunction with common-law privacy. If the requestor is the child victim's parent, managing conservator, or legal representative, or is acting as the authorized representative of one of these individuals, then he is also the child victim's authorized representative. Under section 552.023 of the Government Code, "a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023; *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom he is authorized representative). Therefore, the department may not withhold the submitted information from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the requestor is not the child victim's parent, managing conservator, or legal representative, or is not acting as the authorized representative of one of these individuals, then the submitted information must be withheld in its entirety from the requestor under section 552.101 in conjunction with section 261.201 of the Family Code. If the requestor is the child victim's parent, managing conservator, or legal representative, or is acting as the authorized representative of one of these individuals, the department must release the

responsive information to the requestor. In this event, we note the requestor has a special right of access to the information being released. If the department receives another request for this same information from a different requestor, it must again seek a ruling from this office.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 494771

Enc. Submitted documents

c: Requestor
(w/o enclosures)