



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2014

Mr. Daniel Ortiz
Assistant City Attorney
Office of the City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2014-08930

Dear Mr. Ortiz:

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# 523760 (El Paso Request ID# 14-1026-4132).

The El Paso Police Department (the "department") received a request for all reports pertaining to the requestor from a specified period of time. You state you are releasing some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 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. This section encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part as follows:

(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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

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

Fam. Code § 261.201(a), (k), (l)(1)-(2). You assert some of the submitted information was used or developed in investigations of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201),

261.001(1) (defining “abuse” for purposes of section 261.201). Upon review, we find some of the submitted information is within the scope of section 261.201(a). You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the information we have marked is confidential pursuant to section 261.201(a) of the Family Code. Therefore, the department must withhold this information in its entirety under section 552.101 of the Government Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, in one of the reports subject to chapter 261, the requestor is one of the child victims, who is now an adult. Thus, the department may not withhold this report from the requestor on the basis of section 261.201(a). *See* Fam Code § 261.201(k). Section 261.201(l)(1) states the identity of any other child victim or witness must be redacted before a governmental body releases information under section 261.201(l). *Id.* § 261.201(l)(1). Therefore, the department must withhold the identifying information of the other child victim in this report, which we have marked, under section 552.101 in conjunction with section 261.201(l)(1).

Furthermore, we note the requestor is the step-mother of the child victim listed in report number 13-183810 and 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). *See id.* § 261.201(k). Therefore, we must rule conditionally. If the requestor is not the child victim’s parent, managing conservator, or legal representative, then report number 13-183810 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the child victim’s parent, managing conservator, or legal representative, then the department may not use section 261.201(a) to withhold this information from the requestor. *See id.* In that instance, section 261.201(1)(2) provides that any information excepted from disclosure under the Act or other law must be withheld. *See id.* § 261.201(1)(2). Thus, in the event the requestor does have a right of access to report number 13-183810, we will address the department’s argument under section 552.108 of the Government Code for report number 13-183810, as well as for the remaining reports at issue.

Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1),

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

.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state some of the submitted information relates to a pending criminal investigation and prosecution. Based upon your representation and our review, we conclude that the release of the information we have marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold the information we have marked under section 552.108(a)(1) of the Government Code.²

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state some of the remaining information relate to investigations that were never prosecuted. Thus, you state the information at issue relates to closed cases that did not result in conviction or deferred adjudication. Based on your representations and our review, we find that section 552.108(a)(2) is applicable the information we have marked.

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*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the information we have marked under section 552.108(a)(2) of the Government Code, including report number 13-183810 in the event the requestor does have a right of access to this report.³

Section 552.101 of the Government Code also encompasses the doctrines of common-law privacy and constitutional privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To

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demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

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)).

Upon review, we find the department has failed to demonstrate any of the remaining information is highly intimate or embarrassing and a matter of no legitimate public interest. Therefore, no portion of the information at issue may be withheld under section 552.101 in conjunction with common-law privacy. Furthermore, we find the department has failed to demonstrate any of the remaining information falls within the constitutional zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, none of the remaining information may be withheld under section 552.101 in conjunction with constitutional privacy.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 261.201(a) and 261.201(l)(1) of the Family Code. Furthermore, if the requestor is not the child victim's parent, managing conservator, or legal representative in report number 13-183810, then this report must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department may withhold the information we have marked under section 552.108(a)(1) of the Government Code. With the exception of basic information, the department may withhold the information we have marked under section 552.108(a)(2) of the Government Code, including report number 13-183810 in the event the requestor does have a right of access to this report. 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.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,

A handwritten signature in black ink, appearing to read "Sarah Casterline", with a large, stylized flourish extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/bhf

Ref: ID# 523760

Enc. Submitted documents

c: Requestor
(w/o enclosures)