



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2014

Ms. Raethella Jones
Chief - Civil Division
Brazoria County District Attorney
111 East Locust Street, Suite 408A
Angleton, Texas 77515

OR2014-18543

Dear Ms. Jones:

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# 539579.

The Brazoria County Sheriff's Office (the "sheriff's office") received a request for information pertaining to call records from a specified time period relating to a specific address. You claim the submitted information is exempted 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 exempts 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 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.

Fam. Code § 261.201(a), (k). We note case number 2014-040033 was used or developed in an investigation of alleged child abuse. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Therefore, we find case number 2014-040033 falls within the scope of section 261.201(a). We note the requestor is a parent of the child victim listed in the report. Pursuant to section 261.201(k), an investigating entity may not withhold records subject to section 261.201 from a parent who is not suspected of committing the abuse. *See id.* § 261.201(k). Although the requestor is a parent of the child victim at issue in this report and is not alleged to have committed the alleged abuse, the child victim is now an adult. Thus, we find the requestor does not have a right of access to this report under section 261.201(k). *See id.* As we have no indication the sheriff’s office has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the sheriff’s office must withhold case number 2014-040033 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find the information we marked satisfies the standard articulated in *Industrial Foundation*. Accordingly, the sheriff’s office must withhold the information we marked in case number 2013-000505 under section 552.101 of the Government Code in conjunction with

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

common-law privacy. However, we find the sheriff's office has failed to demonstrate how any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the sheriff's office may not withhold any of the remaining information on the basis of section 552.101 in conjunction with common-law privacy.

In summary, the sheriff's office must withhold case number 2014-040033 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff's office must withhold the information we marked in case number 2013-000505 under section 552.101 of the Government Code in conjunction with 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.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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 539579

Enc. Submitted documents

c: Requestor
(w/o enclosures)