



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2014

Chief Gregory L. Grigg
Chief of Police
Deer Park Police Department
2911 Center Street
Deer Park, Texas 77536-4942

OR2014-18854

Dear Chief Grigg:

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# 539848 (ReferenceRequests #225 – July 2014 and #52 – August 2014).

The Deer Park Police Department (the "department") received two requests from two separate requestors for information pertaining to a specified address during a specified time involving named individuals. You state you have released some information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the requests for information because it falls outside of the requested time period. The ruling does not address the public availability of the non-responsive information, which we have marked, and that information need not be released.²

¹We note the department failed to comply with its procedural obligations under the Act in response to the first request for information. See Gov't Code § 552.301(b), (e). However, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to withhold information, we will address the applicability of these exceptions to the information at issue. *Id.* § 552.302.

²As you do not raise section 552.130 of the Government Code for any of the responsive information, we need not address that argument.

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 made confidential by other statutes, including 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.

(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 claim incident report numbers 14-01929 and 14-02039 are subject to section 261.201 of the Family Code. Upon review, we agree these incident reports were used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261); *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 disabilities of minority removed for general purposes). Accordingly, these incident reports are within the scope of section 261.201 of the Government Code. The second requestor is not a parent, managing conservator, or other legal representative of the child victim in incident report number 14-01929. Further, you state the department has not adopted a rule that governs the release of this type of information. Therefore, the department must withhold incident report number 14-01929 in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

We note the second requestor is the father of some of the victims and is alleged to have committed the suspected abuse or neglect in incident report number 14-02039. Thus, this requestor does not have a right of access to incident report number 14-02039 under section 261.201(k). *See id.* § 261.201(k). Accordingly, the department must withhold incident report number 14-02039 in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

We further note the first requestor is the mother of the child victim in incident report number 14-01929 and is the mother of some of the child victims in incident report number 14-02039, and she is not alleged to have committed the abuse or neglect in either report. Thus, the department may not withhold incident report numbers 14-01929 and 14-02039 from this requestor under section 552.101 in conjunction with section 261.201(a) of the Family Code.³ *See Fam. Code § 261.201(k).* However, section 261.201 also provides that before a record concerning a child can be copied or inspected by the child’s parent, managing conservator, or other legal representative under section 261.201(k), any personally identifiable information about a victim or witness under 18 years of age who is not the parent’s, managing conservator’s, or other legal representative’s child must be redacted. *See id.* § 261.201(l)(1). Thus, the department must withhold the identities of the juvenile witnesses and victims who are not the first requestor’s children, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. Additionally, section 261.201(l)(2) states that any information excepted from required disclosure under the

³We note we have no indication the first requestor seeks these reports on behalf of the second requestor.

Act or other law must be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider your remaining arguments against disclosure of this information.

You claim some of the information in incident report numbers 14-01929 and 14-02039 is subject to common-law privacy, which is also encompassed by section 552.101 of the Government Code. The doctrine of common-law privacy 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked in incident report numbers 14-01929 and 14-02039 satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold from the first requestor the information we marked in these reports under section 552.101 of the Government Code in conjunction with common-law privacy.

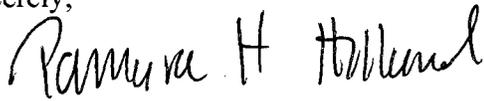
You also seek to withhold some of the information in incident report numbers 14-01929 and 14-02039 under section 552.147 of the Government Code, which provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147(a). You seek to withhold the social security number of a juvenile victim. However, because section 552.147 protects personal privacy, the first requestor has a right of access to her minor child’s social security number under section 552.023 of the Government Code. *See id.* § 552.023(a) (“person or 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”). Thus, the department may not withhold the social security number you have marked under section 552.147.

In summary, the department must withhold incident report numbers 14-01929 and 14-02039 from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. In releasing incident report numbers 14-01929 and 14-02039 to the first requestor pursuant to section 261.201(k) of the Family Code, the department must withhold (1) the identities of the juvenile witnesses and victims who are not the first requestor’s children, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code and (2) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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 that reads "Tamara H. Holland". The signature is written in a cursive style with a large initial "T" and "H".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bhf

Ref: ID# 539848

Enc. Submitted documents

c: Requestor
(w/o enclosures)