



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 17, 2014

Ms. Evelyn W. Kimeu  
HPD Staff Attorney  
City of Houston  
1200 Travis  
Houston, Texas 77002-6000

OR2014-22957

Dear Ms. Kimeu:

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# 551139 (ORU No. 14-6230, 14-6562, 14-7270).

The Houston Police Department (the "department") received three requests from different requestors for information pertaining to a specified investigation: the department received the first request on September 15, 2014 (the "first requestor"), the second on October 1, 2014 (the "second requestor"), and the third on October 28, 2014 (the "third requestor"). The department claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.<sup>1</sup>

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<sup>1</sup>You acknowledge, and we agree, the department did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies). Thus, we will consider the applicability of these sections to the information at issue.

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; and
- (3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). You assert the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect 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 the submitted information is within the scope of section 261.201(a). Therefore, the department must withhold the submitted information in its entirety from the second and third requestors 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). However, the first requestor represents one of the child victims. Thus, the department may not withhold the submitted information from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). However, section 261.201(l)(1) states any personally identifiable information about a victim or witness who is under eighteen years of age and is not the child of the parent, managing conservator, or other legal representative requesting the information shall be withheld from disclosure. *Id.* § 261.201(l)(1). Therefore, the department must withhold from the first requestor the identifying information of any child victims in the submitted information, other than the requestor’s client, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1). In addition, section 261.201(l)(3) provides the identity of the reporting party must be withheld. Therefore, the department must withhold the identifying information of the reporting party in the submitted documents under section 552.101 in conjunction with section 261.201(l)(3). Section 261.201(l)(2) also states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). According, we must address whether the department must withhold any of the remaining information from the first requestor under the Act.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See* Gov’t Code § 411.089(b)(1). Therefore, the department must withhold from the first requestor the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code 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. 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 some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold from the first requestor the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. See Gov't Code § 552.130. The department must withhold from the first requestor the motor vehicle record information we have marked under section 552.130 of the Government Code.

To conclude, the department must withhold from the first requestor (1) the identifying information of any child victims in the submitted information, other than the requestor's client, under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code, (2) the identifying information of the reporting party in the submitted documents under section of the Government Code 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code, (3) the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and common-law privacy, and (4) the information we have marked under section 552.130 of the Government Code, but must release the remaining information to the first requestor. The department must withhold the submitted information in its entirety from the second and third requestors under section 552.101 of the Government Code in conjunction with section 261.201(a) 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.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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cbz

Ref: ID# 551139

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)