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ATTORNEY GENERAL OF TEXAS

January 22, 2016

Ms. Linda A. Samples
Assistant City Attorney
Office of the City Attorney
Office of the City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

OR2016-01699

Dear Ms. Samples

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# 594949 (El Paso Reference # 15-1026-6811).

The El Paso Police Department (the "department") received a request for all police reports pertaining to two specified addresses, certain types of offenses, and a named complainant, during a specified time period. You state you have released some information. 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.

Section 552.101 of the Government Code excepts from public 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 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.

Fam. Code § 261.201(a). You claim the submitted information was used or developed in an investigation by the department of 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), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Upon review, we find case numbers 15-112002, 15-025805, 14-364040, and 14-336840 consist of reports of alleged or suspected abuse or neglect of a child. You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Accordingly, the department must withhold these case numbers under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ However, we find the remaining information does not identify any alleged victims. Thus, you have failed to demonstrate the remaining information consists of a report of alleged or suspected child abuse or neglect, the identity of the person making the report, or information used or developed in an investigation of child abuse or neglect under chapter 261 of the Family Code. Therefore, the department may not withhold the remaining information under section 552.101 in conjunction with section 261.201.

Section 552.101 of the Government Code also encompasses the doctrines of constitutional and common-law privacy. 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 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

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*

¹As our ruling is dispositive of this information, we need not address your remaining argument under section 552.101 of the Government Code.

Foundation. Id. at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* ORD 455.

You assert the remaining information is protected under constitutional and common-law privacy. Upon review, however, we find you have not demonstrated the remaining information falls within the zones of privacy or otherwise implicates an individual's privacy interests for the purposes of constitutional privacy. We also find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. We therefore conclude the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with constitutional or common-law privacy.

In summary, the department must withhold case numbers 15-112002, 15-025805, 14-364040, and 14-336840 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 594949

Enc. Submitted documents

c: Requestor
(w/o enclosures)