



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2006

Ms. Pamela Smith
Assistant General Counsel
Texas Dept of Public Safety
Box 4087
Austin Texas 78773-0001

OR2006-13368

Dear Ms. Smith:

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# 263056.

The Texas Department of Public Safety (the "department") received a request for all documents from the investigation and arrest of a named individual. You claim that the requested 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.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and

¹We note that the requested information has been previously addressed by this office in Open Records Letter No. 1996-0152 (1996), where we ruled that the information at issue was confidential under section 261.201 of the Family Code. However, since that ruling, section 261.201(h) was added to the Family Code. Act of May 29, 1999, 76th Leg., R.S., ch. 1150, § 3, 1999 Tex. Gen. Laws 4044. As the law on which the prior ruling was based has changed, Open Records Letter No. 1996-0152 is not a previous determination for the requested information. *See Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).*

encompasses information made confidential by other statutes. Gov't Code § 552.101. You claim that the submitted information is made confidential under section 261.201 of the Family Code, which provides in pertinent part:

(a) The 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.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

Fam. Code § 261.201(a), (h). You assert that the submitted information is confidential in its entirety under section 261.201(a). However, section 261.201 does not apply to an investigation of child abuse or neglect in a home or facility regulated under chapter 42 of the Human Resources Code. *See id.* § 261.201(h). We have been informed that the incident at issue occurred at a child care facility that was regulated under chapter 42 of the Human Resources Code. We therefore find that section 261.201 is not applicable to the investigation at issue, and we determine that the department may not withhold any of the submitted information under section 552.101 on that basis.

We note, however, that section 552.101 also encompasses the doctrine of common law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release 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 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

Generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy. However, a governmental body is required to withhold an entire report when identifying information

is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, most of the submitted information relates to the investigation of sexual assaults. Thus, based on the circumstances surrounding the request and the requestor's relationship with the individual named in the request, we believe the requestor knows the identity of the victims; thus, withholding only the identifying information from the requestor would not preserve the victims' common law right to privacy. We therefore conclude that the department must withhold most of the submitted information in its entirety pursuant to the common law privacy principles incorporated by section 552.101. We have marked the information that must be withheld under common law privacy. *The remaining information* does not reveal details of the assaults or the identities of the victims. Therefore, the remaining information is not subject to common law privacy.

However, we note that a portion of the remaining information is subject to chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Section 411.083 of the Government Code deems confidential CHRI that the department maintains, except that the department may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 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 a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from the department or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from the department or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked the CHRI that must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

The remaining information also contains Texas motor vehicle information. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. Thus, the department must withhold the Texas motor vehicle information we have marked in accordance with section 552.130.

Finally, we note that the remaining information contains social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a

living person is excepted from” required public disclosure under Act. Therefore, the department must withhold the social security numbers we have marked under section 552.147.²

In summary, we have marked the information that is subject to common law privacy and must be withheld under section 552.101 of the Government Code. We have marked the CHRI that must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The department must withhold the Texas motor vehicle information we have marked in accordance with section 552.130. The department must withhold the social security numbers we have marked under section 552.147. The remaining information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/krl

Ref: ID# 263056

Enc. Submitted documents

c: Ms. Marjorie Bachman
Staff Attorney
Texas Center for Actual Innocence
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(w/o enclosures)