



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2009

Ms. Luz Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2009-02461

Dear Ms. Sandoval-Walker:

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# 335841.

The El Paso Police Department (the "department") received a request for police report number 08268221. You claim the requested report 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 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, including section 261.201 of the Family Code. Section 261.201(a) provides as follows:

(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.

Fam. Code § 261.201(a). You claim the submitted information is subject to section 261.201 of the Family Code. *See id.* § 261.001 (defining "abuse" and "neglect" 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). In this instance, however, the submitted information concerns an alleged kidnapping. Although the submitted information contains references to a separate child neglect investigation, you do not explain, nor do the documents reflect, that the department actually used or developed the submitted information in an investigation under chapter 261. Thus, you have failed to demonstrate that the submitted information is confidential in its entirety under section 261.201(a)(2) of the Family Code. However, the references to the separate child neglect investigation are within the scope of chapter 261 of the Family Code. Therefore, the information we have marked is confidential under section 261.201(a)(1) and must be withheld under section 552.101.¹ The remaining information in the submitted report is not confidential under section 261.201 and may not be withheld under section 552.101 on that basis.

You also claim the remaining information is confidential under both common-law and constitutional privacy, both of which are encompassed by section 552.101 of the Government Code.² 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). 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.

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 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

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

²Although you also state the information at issue is “protected by a statutory grant of confidentiality; a judicial grant of confidentiality, . . .” you have not directed our attention to any other state or federal statute, nor are we aware of any such statute, that would make the remaining information confidential. *See, e.g.*, Open Records Decision No. 478 at 2 (1987) (statutory confidentiality).

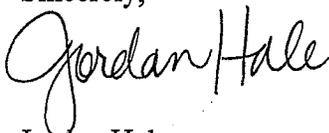
Upon review, we find that you have failed to demonstrate how any of the remaining information constitutes highly intimate or embarrassing information of no legitimate concern to the public. Additionally, you have not demonstrated how any of the information at issue falls within the zones of privacy or implicates privacy interests for purposes of constitutional privacy. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with either common-law or constitutional privacy.

In summary, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As you raise no other arguments against disclosure of the remaining information, it must be released to the requestor.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 335841

Enc. Submitted documents

cc: Requestor
(w/o enclosures)