



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 10, 2009

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

OR2009-16015

Dear Mr. 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# 361053 (Request # 251).

The Deer Park Police Department (the "department") received a request for information relating to a specified incident. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides 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 department 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). The submitted report was used or developed in an investigation of child endangerment. *See* Fam. Code §§ 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 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). Thus, we find the submitted report is generally confidential under section 261.201(a) of the Family Code. However, the requestor may be the parent of the child who is the subject of the report, and the requestor is not alleged to have committed the suspected abuse. As such, the requestor

may have a right of access to the submitted information pursuant to section 261.201(k). We are unable to determine, however, whether the requestor is a parent of the child involved." Therefore, we will rule conditionally. If the requestor is not the parent of the child victim listed in the submitted information, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the requestor is the parent of the child victim, pursuant to section 261.201(k), the department may not withhold the submitted information from the requestor under section 261.201(a). *Id.* § 261.201(k). We note that section 261.201(l)(3) requires that before a parent may inspect such records, however, the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Therefore, the identity of the reporting party, which we have marked, is confidential pursuant to section 261.201(l)(3) and must be withheld under section 552.101 of the Government Code. Furthermore, section 261.201(l)(2) states that any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will address your argument under common-law privacy for the submitted information. We will also consider whether section 552.130 of the Government Code is applicable to portions of the submitted information.<sup>1</sup>

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Industrial Found. v. Texas 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 demonstrated. *See id.* at 681-82. 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. *See id.* Upon review, we find that none of the submitted information is intimate or embarrassing and of no legitimate interest. Thus, the submitted information may not be withheld on the basis of common-law privacy.

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 or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code* § 552.130(a)(1), (2). The department must withhold the Texas driver's license numbers we have marked pursuant to section 552.130.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, if the requestor is not the parent of the child victim listed in the submitted information, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is the parent of the child victim, the remaining information must be released to the requestor, with the exception of the marked information that identifies the reporting party and the information we have marked under section 552.130 of the Government Code.<sup>2</sup>

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](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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/jb

Ref: ID# 361053

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note that if the requestor has a statutory right of access to the submitted information, the department must again seek a decision from this office if it receives another request for the same information from another requestor.