



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2009

Ms. Amie Hajovsky
Municipal Prosecutor
The City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

OR2009-17905

Dear Ms. Hajovsky:

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# 364762.

The San Angelo Police Department (the "department") received a request for a specified incident and calls for service reports. 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.

Initially, we note you have not submitted the requested calls for service report for our review. To the extent this information existed at the time the department received the instant request for information, we assume you have released it to the requestor. If such information has not been released, then you must do so at this time. *See* Gov't Code §§ 552.301, .302.

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." *Id.* § 552.101. This exception encompasses information that other statutes make confidential such as section 261.201(a) of the Family Code, which provides in pertinent part:

(a) Except as provided by Section 261.203, 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 state the submitted information constitutes a report of alleged or suspected child abuse or neglect. However, upon review of the information at issue, we find it pertains to an investigation of a domestic disturbance between two adults and the arrest of an adult for public intoxication. Although Child Protective Services ("CPS") was notified, the department has not explained that the information at issue was used by CPS in an investigation conducted under chapter 261. Consequently, we find you have failed to adequately demonstrate how this information constitutes a report of alleged or suspected child abuse or neglect or that it was used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001 (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). We therefore conclude section 261.201 is not applicable to the investigation at issue and the department may not withhold any portion of the submitted information under section 552.101 on such basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked constitutes highly intimate or embarrassing information of no legitimate public interest. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy, and as you raise no further exceptions against disclosure, 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.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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 364762

Enc. Submitted documents

c: Requestor
(w/o enclosures)