



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2009

Ms. Mary Azam
Georgetown Police Department
809 Martin Luther King Street
Georgetown, Texas 78626

OR2009-18252

Dear Ms. McPhee:

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#365590 (GT# 579).

The Georgetown Police Department (the "department"), which you represent, received a request for all records pertaining to a specified address for a specified time period. You state you have released most of the information to the requestor. You claim that 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 exception encompasses information that other statutes make confidential. Section 261.201(a) of the Family Code 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 [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state that the submitted reports were used and developed in investigations of alleged or suspected child abuse by Child Protective Services. Based on your representations and our review, we find that the information we have marked is within the scope of section 261.201 of the Family Code. *See id.* § 261.001 (defining “abuse” and “neglect” for the 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). You do not indicate that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the information we have marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* However, the department has failed to demonstrate that any of the remaining information is confidential pursuant to section 261.201; therefore, no portion of the remaining information may be withheld under section 552.101 on that basis.

You state that a portion of the remaining information is confidential under common-law privacy which is also encompassed by section 552.101. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. The information you seek to withhold under common-law privacy consists of an incident report where an individual is updating his sex offender registration. We note that even though it may be intimate or embarrassing, information is not protected by common-law privacy if it is a matter of legitimate public interest. *See id.* at 685; *Open Records Decision No. 579 at 7 (1990)*. Because the Texas Department of Public Safety’s database of registered sex offenders is available to the public, we believe that whether a particular individual is a sex offender is a matter of legitimate public interest. *See Crim. Proc. Code art. 62.005.* Therefore, upon review of the remaining information, we conclude that it does not contain information that is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 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.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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/eb

Ref: ID# 365590

Enc. Submitted documents

cc: Requestor
(w/o enclosures)