



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 19, 2011

Ms Luz E. Sandoval-Walker  
Assistant City Attorney  
City of El Paso  
810 Overland  
El Paso, Texas 79901

OR2011-05453

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# 414928 (ORR Nos. 2011-02-36-AG & 2011-02-20-AG).

The El Paso Police Department (the "department") received two requests for incident reports pertaining to a specified incident. The first request seeks report 11-006014; the second request seeks reports 11-006014 and 11-006057. 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 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, such as section 261.201 of the Family Code, which provides in relevant part:

(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 [Texas Department of Family and Protective Services] 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:

o . . .

(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). You assert report 11-006014 was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261.201 of Family Code). Upon review, we agree report 11-006014 is within the scope of section 261.201(a). The second requestor is not a parent, managing conservator, or other legal representative of the child victim; therefore, the department must withhold report 11-006014 in its entirety from the second requestor under section 552.101 in conjunction with section 261.201(a). The first requestor, however, is a parent of the child victim and is not alleged to have committed the suspected abuse or neglect. Thus, the department may not withhold the submitted information from the first requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(3) provides that before a parent can copy and inspect a record of a child under section 261.201(k), the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(3). Thus, the department must withhold the identity of the reporting party, which we have marked under section 552.101 in conjunction with section 261.201(l)(3), from the first requestor. Additionally, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address your arguments under common-law privacy for the remaining portions

of report 11-006014 with regard to the first request, as well as for report 11-006057 with regard to the second request.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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* include 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. This office has found that 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 in the submitted reports is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the department must withhold the marked information in report 11-006014 from the first requestor and the marked information in report 11-006057 from the second requestor under section 552.101 in conjunction with common-law privacy. However, we find the remaining information in the submitted reports is either not highly intimate or embarrassing or is of legitimate public interest. Accordingly, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold report number 11-006014 in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must release report 11-006014 to the first requestor pursuant to section 261.201(k) of the Family Code, but must withhold from this report the identity of the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked in report 11-006057 from the second requestor. The remaining information in report 11-006057 must be released to the second 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](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,

A handwritten signature in black ink that reads "Kate Hartfield". The signature is written in a cursive style with a large, stylized "K" and "H".

Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 414928

Enc. Submitted documents

c: Requestor  
(w/o enclosures)