



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 21, 2011

Mr. Gregory A. Alicie  
Open Records Specialist  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2011-08813

Dear Mr. Alicie:

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# 421354.

The Baytown Police Department (the "department") received a request for a specified report. You claim the submitted 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 exception encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201(a) generally makes confidential working papers used or developed in investigations of child abuse or neglect. *See* Fam. Code § 261.201(a). Upon review, we find the report was used or developed in an investigation by the department of alleged child abuse for purposes of section 261.201. *See id.* § 261.001(1)(E) (definition of "abuse" for purposes of Family Code chapter 261 includes offense of indecency with child under Penal Code section 21.11); *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 disabilities of minority removed for general purposes). Thus, the report is subject to section 261.201. However, the requestor is one of two alleged child victims listed in the report and is at least eighteen years of age. Therefore, the department may not withhold information concerning the alleged abuse from this

requestor under section 261.201(a)(2) of the Family Code. *See id.* §§ 261.201(a)(2), .201(k). Section 261.201(l)(2) states, however, that any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(l)(2). Because you raise section 552.101 of the Government Code in conjunction with common-law privacy for the report, we will address your argument against disclosure.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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). Because the report pertains to the alleged offense of indecency with a child, it concerns a sex-related offense. *See* Penal Code § 21.11 (defining indecency with child as sexual offense for purposes of chapter 21 of Penal Code). Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold all of the information at issue when the requestor knows the identity of the alleged sexual assault victim. *See* ORD 393. In this instance, the report reveals the requestor knows the identity of the second alleged victim listed in the report. Therefore, withholding only the second victim's identity from the requestor would not preserve that victim's common-law right of privacy. Accordingly, the entire report must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/eb

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)