



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2013

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

OR2013-01292

Dear Chief 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# 477742 (Deer Park Request # 55).

The Deer Park Police Department (the "department") received a request for incident report 12-02954. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 information that other statutes make confidential, such as section 261.201(a) of the Family Code. Section 261.201(a) provides in pertinent 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:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). You state the submitted information was used or developed in an investigation of alleged or suspected child neglect. *See id.* § 261.001(4) (defining “neglect” for purposes of Family Code chapter 261); *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). Accordingly, we conclude this information is within the scope of section 261.201(a). We note, however, the requestor is a parent of the alleged child victims at issue. Furthermore, the requestor is not the individual alleged to have committed the neglect. Therefore, the department may not withhold the submitted information from the requestor under section 261.201(a) of the Family Code. *See id.* § 261.201(k). However, the department must redact any information that is otherwise excepted from required disclosure under the Act pursuant to section 261.201(l)(2). *Id.* § 261.201(l)(2). Accordingly, we will address your arguments under sections 552.101 and 552.130 of the Government Code.

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 the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types of information considered intimate or 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.* at 683. This office has also found common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See Open Records Decision No. 394* (1983); *cf. Fam. Code § 261.201*. As previously noted, the requestor is the parent of the alleged child victims of neglect. As such, the requestor has a special right of access under section 552.023 of the Government Code to information pertaining to her children the department would be required to withhold from the general public to protect the victims' privacy. *See Gov't Code § 552.023*; *Open Records Decision No. 481 at 4* (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, the department may not withhold the information pertaining to the requestor's children from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. Additionally, we find no portion of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Accordingly, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. *See Gov't Code § 552.130(a)(1)*. We find the department must withhold the driver's license information you have marked under section 552.130 of the Government Code.

In summary, the department must withhold the driver's license information you have marked under section 552.130 of the Government Code. The remaining information must be released to this requestor.¹

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.

¹We note that the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 477742

Enc. Submitted documents

c: Requestor
(w/o enclosures)