



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2013

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2013-12860

Dear Mr. Bounds:

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# 494566 (CCPD File No. ADev1).

The Corpus Christi Police Department (the "department") received a request for all documents related to three specified incidents. You state you will make some information available to the requestor with redactions pursuant to section 552.130(c) of the Government Code and Open Records Decision No. 684 (2009).¹ You claim portions of the remaining requested information are 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."

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

Gov't Code § 552.101. This section encompasses information protected by other statutes such as section 261.201 of the Family Code.² Section 261.201 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 . . . 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). Upon review, we find Incident/Investigation Report Number 1303270098 was used or developed in an investigation of alleged or

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

suspected abuse or neglect of a child under chapter 261 of the Family Code. *See id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for 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). Thus, we find Incident/Investigation Report Number 1303270098 is generally confidential under section 261.201 of the Family Code.

We note the requestor is the parent of the child victims named in the report. Further, the requestor is not alleged to have committed the suspected abuse or neglect. Therefore, the department may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* § 261.201(k). However, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Therefore, we will consider your argument under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy 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). The type 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. In addition, this office has found medical information or information indicating disabilities or specific illnesses is 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 agree the portions of the submitted information you have marked are highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other exceptions to disclosure, the remaining information must be released.³

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.

³Because this requestor has a special right of access to the information being released, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office. *See* Fam. Code § 261.201(k).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 494566

Enc. Submitted documents

c: Requestor
(w/o enclosures)