



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2013

Mr. Gerard Calderon
Assistant Criminal District Attorney
Bexar County
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2013-16668

Dear Mr. Calderon:

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# 500304.

The Bexar County Crime Laboratory (the "county") received a request for information pertaining to a specified case number, including 1) information pertaining to the destruction of certain biological evidence, 2) the weight of the biological evidence destroyed and the date of its destruction, 3) information pertaining to the person or persons involved in the destruction, and 4) protocols and procedures in place in October 2000. You claim 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. We have also considered comments submitted to this office by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments stating why information should or should not be released).

Initially, we note portions of the submitted information, which we have marked, are not responsive to the request for information because they do not pertain to any of the categories of the request. This ruling does not address the public availability of non-responsive information, and the county need not release the non-responsive information to the requestor.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(17) of the Government Code provides for the required public disclosure of "information that is also contained in a public court record." Gov't Code § 552.022(a)(17). We have marked court-filed documents that are subject to

section 552.022(a)(17) of the Government Code. This information must be released unless it is made confidential under the Act or other law. *See id.* Although you seek to withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy, we note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the submitted court-filed documents may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, because section 552.101 of the Government Code can make information confidential under the Act, we will consider your remaining argument under that section for the marked court-filed documents. We will also consider your arguments for the remaining information not subject to section 552.022(a)(17).

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 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 [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). Upon review, we agree some of the submitted information, which we have marked, was used or developed in an investigation of alleged or suspected child abuse conducted by the Bexar County Sheriff’s Office; thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (defining “abuse” for purposes of chapter 261 of the Family Code to include offense of aggravated sexual assault under Penal Code § 22.021); *see also* Penal Code § 21.011(c)(1) (defining “child” for purposes of section 22.021 as person younger than seventeen years of age). As you do not indicate that the county has adopted a rule that governs the release of this type of information, we assume that no such regulation exists. Given that assumption, and based on our review, we determine that the information we have marked is confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the county must withhold the marked information from disclosure under section 552.101 of the Government Code in conjunction with

section 261.201(a) of the Family Code.¹ However, we find the county failed to explain how the remaining information was used or developed in an investigation under chapter 261 of the Family Code. Accordingly, the county may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

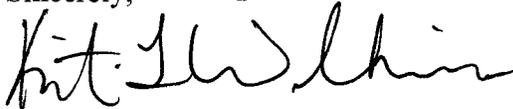
Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the county 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 county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The county must release the remaining information.

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.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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 500304

Enc. Submitted documents

c: Requestor
(w/o enclosures)