



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2014

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Civil Division
County of Lubbock
916 Main Street, Suite 1018
Lubbock, Texas 79401

OR2014-07694

Dear Ms. Clarke:

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# 522281.

The Lubbock County Sheriff's Office (the "sheriff's office") received a request for all calls and reports involving named individuals at specified addresses. You state you have released some information to the requestor. You claim that submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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 section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

¹We note the sheriff's office did not comply with section 552.301(b) of the Government Code in requesting this decision. See Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. See *id.* §§ 552.007, .302, .352.

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). Upon review, we agree the submitted information relates to an investigation of child abuse conducted by the sheriff's office. *See id.* § 261.001(1) (defining "abuse" 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). Accordingly, we find the submitted information is subject to chapter 261 of the Family Code. We note the requestor is a step-parent of the child victim listed in the information and is not alleged to have committed the alleged abuse or neglect. As such, this requestor may have a right of access to the submitted information pursuant to section 261.201(k). *Id.* § 261.201(k). Thus, if the requestor is not the child victim's parent, managing conservator, or legal representative, then the information at issue must be withheld in its entirety from the requestor under section 552.101 of the Government Code in

conjunction with section 261.201(a) of the Family Code.² On the other hand, if the requestor is the child victim's parent, managing conservator, or legal representative, the sheriff's office may not use section 261.201(a) to withhold this information from the requestor. *Id.* § 261.201(k). Pursuant to section 261.201(l)(2), the sheriff's office must redact any information that is otherwise excepted from required disclosure under the Act. *See id.* § 261.201(l)(2). Thus, we will address your remaining argument against disclosure of the submitted information.

Section 552.101 of the Government Code 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. 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. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decision Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

You seek to withhold the submitted information in its entirety from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the child victim's parent, managing conservator, or legal representative, or is acting as the authorized representative of one of these individuals, then she is also the child victim's authorized representative. Under section 552.023 of the Government Code, "a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023; *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom he is authorized representative). Therefore, the sheriff's office may not withhold the submitted information from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the submitted information is subject to section 552.130 of the Government Code.³ Section 552.130 provides information relating to a motor vehicle operator's license,

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481, 480 (1987), 470 (1987).

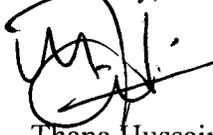
driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own driver's license information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. The submitted information also contains the driver's license information of the requestor's spouse. If the requestor is acting as the authorized representative of her spouse, then the requestor has a right of access to her spouse's driver's license information pursuant to section 552.023 of the Government Code. However, if the requestor is not acting as the authorized representative of her spouse, the sheriff's office must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, if the requestor is not the child victim's parent, managing conservator, or legal representative, then the submitted information must be withheld in its entirety from the requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the child victim's parent, managing conservator, or legal representative, or is acting as the authorized representative of one of these individuals, the sheriff's office must release the submitted information to the requestor. In releasing the submitted information to the requestor, if the requestor is not acting as her spouse's authorized representative, the sheriff's office must withhold the driver's license information we have marked under section 552.130 of the Government Code.

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 522281

Enc. Submitted documents

c: Requestor
(w/o enclosures)