



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2014

Mr. Bill Delmore
Assistant District Attorney
9th Judicial District
207 West Phillips 2nd Floor
Conroe, Texas 77301-2824

OR2014-18643

Dear Mr. Delmore:

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# 538383.

The District Attorney's Office for the 9th Judicial District (the "district attorney's office") received a request for information reflecting (1) the number of alleged undocumented immigrant victims of listed offenses for a specified period of time and (2) law enforcement certifications of United States Citizenship and Immigration Services ("USCIS") Forms I-918, Supplement B, U nonimmigrant status certification ("Form I-918, Supplement B") given to those victims. The district attorney's office states it does not have information responsive to the first category of the requested information.¹ The district attorney's office claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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, including federal law. Section 1367 of title 8 of the United States Codes reads, in part, as follows:

(a) In general

Except as provided in subsection (b) of this section, in no case may the Attorney General [of the United States], or any other official or employee of

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

the Department of Justice, the Secretary of Homeland Security, the Secretary of State, or any other official or employee of the Department of Homeland Security or Department of State (including any bureau or agency of either of such Departments)–

...

(2) permit use by or disclosure to anyone (other than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information which relates to an alien who is the beneficiary of an application for relief under paragraph (15)(T), (15)(U), or (51) of section 101(a) of the Immigration and Nationality Act [8 U.S.C.A. § 1101(a)(15)(T), (U), (51)] or section 240A(b)(2) of such Act [8 U.S.C.A. § 1229b(b)(2)].

The limitation under paragraph (2) ends when the application for relief is denied and all opportunities for appeal of the denial have been exhausted.

(b) Exceptions

(1) The Secretary of Homeland Security or the Attorney General may provide, in the Secretary's or the Attorney General's discretion, for the disclosure of information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of Title 13.

(2) The Secretary of Homeland Security or the Attorney General may provide in the discretion of the Secretary or the Attorney General for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose in a manner that protects the confidentiality of such information.

(3) Subsection (a) of this section shall not be construed as preventing disclosure of information in connection with judicial review of a determination in a manner that protects the confidentiality of such information.

(4) Subsection (a)(2) of this section shall not apply if all the battered individuals in the case are adults and they have all waived the restrictions of such subsection.

(5) The Secretary of Homeland Security and the Attorney General are authorized to disclose information, to Federal, State, and local public

and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to section 1641(c) of this title.

(6) Subsection (a) of this section may not be construed to prevent the Attorney General and the Secretary of Homeland Security from disclosing to the chairmen and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, information on closed cases under this section in a manner that protects the confidentiality of such information and that omits personally identifying information (including locational information about individuals).

(7) Government entities adjudicating applications for relief under subsection (a)(2) of this section, and government personnel carrying out mandated duties under section 101(i)(1) of the Immigration and Nationality Act [8 U.S.C.A. § 1101(i)(1)], may, with the prior written consent of the alien involved, communicate with nonprofit, nongovernmental victims' service providers for the sole purpose of assisting victims in obtaining victim services from programs with expertise working with immigrant victims. Agencies receiving referrals are bound by the provisions of this section. Nothing in this paragraph shall be construed as affecting the ability of an applicant to designate a safe organization through whom governmental agencies may communicate with the applicant.

(8) Notwithstanding subsection (a)(2), the Secretary of Homeland Security, the Secretary of State, or the Attorney General may provide in the discretion of either such Secretary or the Attorney General for the disclosure of information to national security officials to be used solely for a national security purpose in a manner that protects the confidentiality of such information

(c) Penalties for violations

Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section . . . shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than \$5,000 for each such violation.

8 U.S.C. § 1367(a)(2), (b)-(c); *see also id.* § 1101(a)(5) (defining attorney general for purposes of chapter 12 of title 8 of United States Code). Section 214.14 of title 8 of the Code of Federal Regulations also reads in part as follows:

(e) Restrictions on use and disclosure of information relating to petitioners for U nonimmigrant classification—

(1) General. The use or disclosure (other than to a sworn officer or employee of [the Department of Homeland Security], the Department of Justice, the Department of State, or a bureau or agency of any of those departments, for legitimate department, bureau, or agency purposes) of any information relating to the beneficiary of a pending or approved petition for U nonimmigrant status is prohibited unless the disclosure is made:

(i) By the Secretary of Homeland Security, at his discretion, in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. 8;

(ii) By the Secretary of Homeland Security, at his discretion, to law enforcement officials to be used solely for a legitimate law enforcement purpose;

(iii) In conjunction with judicial review of a determination in a manner that protects the confidentiality of such information;

(iv) After adult petitioners for U nonimmigrant status or U nonimmigrant status holders have provided written consent to waive the restrictions prohibiting the release of information;

(v) To Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to 8 U.S.C. 1641(c);

(vi) After a petition for U nonimmigrant status has been denied in a final decision;

(vii) To the chairmen and ranking members of the Committee on the Judiciary of the Senate or the Committee on the Judiciary of the House of Representatives, for the exercise of congressional oversight authority, provided the disclosure relates to information about a closed case and is made in a manner that protects the confidentiality of the information and omits personally identifying information (including locational information about individuals);

(viii) With prior written consent from the petitioner or derivative family members, to nonprofit, nongovernmental victims' service providers for the sole purpose of assisting the victim in obtaining victim services from programs with expertise working with immigrant victims; or

(ix) To federal prosecutors to comply with constitutional obligations to provide statements by witnesses and certain other documents to defendants in pending federal criminal proceedings.

(2) Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367.

8 C.F.R. § 214.14(e)(1)-(2). To obtain U nonimmigrant status, an individual must submit a Form I-918, Petition for U Nonimmigrant Status ("Form I-918") to the USCIS. *See id.* § 214.14(c)(1). The Form I-918 must include a Form I-918, Supplement B, which must be completed by a certifying official to certify that the applicant is a victim of certain qualifying criminal activity and is, has been, or is likely to be helpful in the investigation or prosecution of that criminal activity. *See id.* § 214.14(c)(2)(i); *see also id.* § 214.14(a)(2) (defining certifying agency as a "Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity"), (3) (defining certifying official as "[t]he head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency" or "[a] Federal, State, or local judge"). The submitted information consists of Forms I-918, Supplement B that we understand the district attorney's office completed and provided to the victims at issue. You assert this information is confidential under section 1367(a)(2) of title 8 of the United States Code. However, this section does not prohibit the district attorney's office from releasing the submitted Forms I-918, Supplement B. Rather, it restricts certain federal agencies from allowing the use or disclosure of information relating to petitioners for U nonimmigrant status, with certain exceptions. *See* 8 U.S.C. § 1367(a)(2); *see also U.S. v. Maswai*, 419 F.3d 822, 825 (8th Cir. 2005) (finding statute bars Attorney General or other agency personnel from using or disclosing information related to battered aliens who have pending immigration petitions); Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied). Thus, the district attorney's office may not withhold the submitted information under section 552.101 of the Government Code on that ground.

You also argue this information is confidential under section 214.14(e) of title 8 of the Code of Federal Regulations. We note section 214.14(e) incorporates the prohibitions and restrictions on information relating to U nonimmigrant petitions located in section 1367 of title 8 of the United States Code. *See New Classification for Victims of Criminal Activity:*

Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014, 53026-53027 (Sept. 17, 2007). Therefore, we conclude section 214.14(e), like section 1367(a)(2) of title 8 of the United States Code, does not prohibit the district attorney’s office from releasing the submitted information. Rather, it restricts certain federal agencies, as well as certain local public and private agencies and non-profit, non-governmental service providers who have received information from federal agencies pursuant to the statute and rules, from allowing the use or disclosure of information relating to petitioners for U nonimmigrant status. *See* 8 C.F.R. § 214.14(e)(1). In addition, as discussed above, it appears the district attorney’s office itself provided the submitted forms to the victims at issue and you do not inform us, and it is not otherwise evident, the district attorney’s office received the information in these forms from any federal agency. *See* 8 C.F.R. § 214.14(e)(2). Accordingly, the district attorney’s office may not withhold the submitted forms under section 552.101 in conjunction with section 214.14(e)(1) or 214.14(e)(2) of title 8 of the Code of Federal Regulations.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides as follows:

[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.

Fam. Code § 261.201(a). You assert some of the submitted information is confidential under section 261.201. However, upon review we find you have failed to establish the submitted forms were used or developed in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Therefore, the district attorney’s office may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

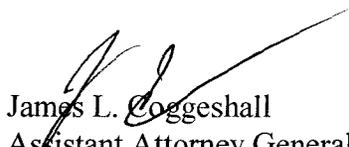
Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. 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. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, *see* Open Records Decision No. 455 (1987); and the identifying information of juvenile victims of abuse or neglect. *cf.* Fam. Code § 261.201; *see also* Open Records Decision No. 628 at 3 (1994) (identities of juvenile victims of serious sexual offenses must be withheld on basis of common-law privacy). Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and the district attorney's office may not withhold it under section 552.101 on that ground. Thus, the district attorney's office must release the remaining information to the requestor.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 538383

Enc. Submitted documents

c: Requestor
(w/o enclosures)