



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 19, 2014

Ms. Donna L. Clarke  
Assistant Criminal District Attorney  
County of Lubbock  
P.O. Box 10536  
Lubbock, Texas 79408-3536

OR2014-21017

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# 546078.

The Lubbock County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified cause number. The district attorney's office claims the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-14272 (2014). In Open Records Letter No. 2014-14272, we determined the district attorney's office must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, the current requestor represents one of the victims at issue in the submitted information. Therefore, we find the facts and circumstances on which Open Records Letter No. 2014-14272 was based have changed with regard to the current requestor. Accordingly, the district attorney's office may not rely on Open Records Letter No. 2014-14272 as a previous determination for the current request and may not withhold any of the requested information in accordance with that ruling. Thus, we will address your arguments under the Act.

We next note the submitted information consists of a completed investigation that is subject to section 552.022(a)(1) of the Government Code, which reads as follows:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Although you assert the submitted information is excepted from release under section 552.111 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 677 (2002) (governmental body may waive attorney work product privilege under section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district attorney's office may not withhold the submitted information under section 552.111. However, the Texas Supreme Court has held the Texas Rules of Civil Procedure are "other law" that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). In addition, section 552.101 of the Government Code makes information confidential under the Act, and information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code. Accordingly, we will consider the applicability of Texas Rule of Civil Procedure 192.5 and sections 552.101 and 552.108 of the Government Code to 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 made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part as follows:

(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 assert the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Upon review, we find the submitted information is within the scope of section 261.201(a). The requestor represents one of the child victims, who is now an adult. Thus, the district attorney’s office may not withhold the submitted information from the requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) provides any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we must address whether the submitted information is otherwise excepted from release under the Act.

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 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

the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may 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 Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

As noted above, the requestor represents one of the child victims at issue in the submitted information. Thus, the requestor has a right of access to that victim's private information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, the requestor's client knows the identity of the other child victim. We believe withholding only the identifying information of the other victim would not preserve the second victim's common-law right to privacy. Thus, the requestor's right to her client's private information under section 552.023 does not overcome the other victim's privacy right in the same information. Therefore, we conclude the district attorney's office must withhold the submitted information in its entirety pursuant to the common-law privacy principles incorporated by section 552.101 of the Government Code.<sup>1</sup>

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](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

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<sup>1</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

Ref: ID# 546078

Enc. Submitted documents

c: Requestor  
(w/o enclosures)