



January 7, 2015

Ms. Amanda Pell  
Open Records Specialist  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2015-00222

Dear Ms. Pell:

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# 549665 (Public Information Request# 3488).

The Baytown Police Department (the "department") received a request for a specified police report. You state you will redact social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim portions of the submitted 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides in 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:

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

(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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information; [and]

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(1)-(2). You state that the submitted information relates to an investigation of alleged child abuse. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261); *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 disabilities of minority removed for general purposes). Based on your representations and our review, we find that the submitted information falls within the scope of section 261.201(a).

The requestor, however, is a parent of the child victim listed in the incident report, and the requestor is not suspected of having committed the alleged abuse. In this instance, the department may not use section 261.201(a) to withhold the submitted information from this requestor. *Id.* § 261.201(k). Nevertheless, section 261.201(l)(1) provides the identifying information of a child witness other than the requestor's child must be redacted. *Id.* § 261.201(l)(1). Therefore, the department must withhold the personally identifying information of the child witnesses in the submitted report, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code.<sup>2</sup> However, section 261.201(l)(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(l)(2). Accordingly, we consider whether the remaining information must be withheld.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find portions of the submitted information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must generally withhold the information we have marked under section 552.101 in conjunction with common-law privacy. We note, however, the requestor is the spouse of the individual whose information is at issue; thus, the requestor may have a right of access to her spouse's private information. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). As we are unable to determine whether the requestor is acting as the authorized representative of her spouse, we rule conditionally. Accordingly, if the requestor is acting as the authorized representative of her spouse, then she has a right of access to the information we have marked that pertains to her spouse pursuant to section 552.023, and it may not be withheld under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of her spouse, then the department must withhold the information we have marked that pertains to the requestor's spouse under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold (1) the identities of the juvenile witnesses, which we have marked, under section 552.101 of the Government Code in conjunction with

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<sup>2</sup>As our ruling is dispositive for this information, we need not address your remaining argument against disclosure.

section 261.201(1)(1) of the Family Code and (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, if the requestor is not acting as the authorized representative of her spouse. The remaining information must be released.<sup>3</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,



Daniel Olds  
Assistant Attorney General  
Open Records Division

DO/akg

Ref: ID# 549665

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the requestor has a special right of access to portions of the information being released. *See* Fam. Code § 261.201(k). Accordingly, if the department should receive another request for this information from a different requestor, the department must again request an opinion from this office. We note that the information being released contains the requestor's email address to which she has a special right of access. *See* Gov't Code § 552.137(b).