



February 10, 2015

Ms. Jordan M. Powell  
Assistant District Attorney  
Civil Division  
County of Hays  
712 South Stagecoach Trail, Suite 2057  
San Marcos, Texas 78666

OR2015-02636

Dear Ms. Powell:

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# 553216 (Hays County Ref. #14-0411).

The Hays County District Attorneys Office (the "district attorney's office") received a request for a copy of all police calls, police reports, court filings, and any other documents, including a specified report, for a specified neighborhood during a specified period of time. You state the district attorney's office has released a portion of the information to the requestor. You state you have released a portion of the information to the requestor. You claim the remaining submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

We note a portion of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-00950

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<sup>1</sup>We note, the district attorney's office did not comply with the requirements of section 552.301 of Government Code. See Gov't Code § 552.301(b), (e). Nevertheless, section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. See *id.* §§ 552.007, .302. Thus, we will consider the district attorney's claims under section 552.101.

(2015). In that ruling, we concluded, among other things, the district attorney's office must withhold the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy. We understand the law, facts, and circumstances on which Open Records Letter No. 2015-00950 was based have not changed. Accordingly, we conclude the district attorney's office must continue to rely on Open Records Letter No. 2015-00950 as a previous determination and withhold the submitted information that is identical to the information that was at issue in Open Records Letter No. 2015-00950 in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider the exceptions you raise.

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 Chapter 552, Government Code, 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 state incident reports C14-42336 and C13-17602 consist of information used or developed in investigations of alleged child abuse. *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 disabilities of minority removed for general purposes). Based on your representation and our review, we find the information in incident reports C14-42336 and C13-17602 is within the scope of section 261.201 of the Family Code. We understand the district attorney's office has not adopted a rule that governs the release of this type of information. Therefore, we find the information at issue is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2

(1986) (predecessor statute). Accordingly, the district attorney's office must withhold incident reports C14-42336 and C13-17602 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, we find you have failed to demonstrate how any of the remaining information was used or developed in an investigation of alleged or suspected child abuse, or consists of a report of alleged or suspected abuse or neglect under chapter 261 of the Family Code. Therefore, none of the remaining information is confidential under section 261.201 of the Family Code, and none of it may be withheld under section 552.101 of the Government Code on that basis.

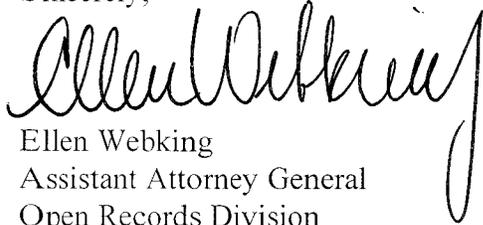
Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. 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 or 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 the information we have marked in the remaining information 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 find you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the district attorney's office must continue to rely on Open Records Letter No. 2015-0090 as a previous determination, and withhold the previously ruled upon information in accordance with it. The district attorney's office must withhold incident reports C14-42336 and C13-17602 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. 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. The remaining information must be released.

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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/akg

Ref: ID# 553216

Enc. Submitted documents

c: Requestor  
(w/o enclosures)