



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 8, 2015

Ms. Lillian Guillen Graham  
Assistant City Attorney  
Office of the City Attorney  
City of Mesquite  
P.O. Box 850137  
Mesquite, Texas 75185-0137

OR2015-13823

Dear Ms. Graham:

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# 570715.

The Mesquite Police Department (the "department") received a request for all photos and records pertaining to a specified incident. The department claims portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions the department claims 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides in relevant part:

- (a) Except as provided by Section 261.203, the 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the department 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; and

Fam. Code § 261.201(a), (k), (l). Upon review, we find the submitted information was used or developed in investigations of alleged or suspected 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 the disabilities of minority removed for general purposes). Based on the department’s representations and our review, we find the submitted information falls within the scope of section 261.201(a). We note the requestor is not the parent of the child victims in report numbers 140522051467 and 140522051416. Thus, the requestor does not have a right of access to these reports. *See id.* § 261.201(k). As the department does not indicate it has adopted a rule that governs this type of information, we assume that no such rule exists. Given that assumption, we conclude the department must withhold report numbers 140522051467 and 140522051416 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).*

However, the department informs us the requestor is a parent of one of the child victims listed in report numbers 140416037825 and 140522051479, and the requestor is not alleged to have committed the suspected abuse. Therefore, the department may not use section 261.201(a) to withhold these reports from this requestor. *See* Fam. Code § 261.201(k). However, section 261.201(l)(2) states a governmental body must redact any information that is excepted from required disclosure under the Act or other law. *See id.* § 261.201(l)(2). Accordingly, we will consider whether the information at issue is otherwise excepted under the Act.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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.

In Open Records Decision No. 393 (1983), this office concluded that, generally, only information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

The information at issue pertains to alleged sex-related offenses. As previously noted, the requestor is the parent of one of the child victims whose privacy interests are at issue in report numbers 140416037825 and 140522051479 and, thus, he has a right of access to that victim's information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023; *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself or person for whom he is authorized representative). However, we note the requestor knows the identities of the other alleged victims. We believe, in this instance, withholding only the identifying information of the other victims from the requestor would not preserve the common-law right to privacy of the other victims. Therefore, to protect the privacy of the other victims, the department must withhold report numbers 140416037825 and 140522051479 in their

entireties under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup>

In summary, the department must withhold report numbers 140522051467 and 140522051416 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold report numbers 140416037825 and 140522051479 in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 570715

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address the department's remaining arguments against disclosure of this information.