



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 13, 2015

Ms. A. Feliz Abalos
Police Legal Advisor
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2015-14192

Dear Ms. Abalos:

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# 571628.

The Odessa Police Department (the "department") received a request for two specified case reports. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim 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

¹Although you also raise section 552.108 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the requested information. *See* Gov't Code §§ 552.301, .302.

Code § 552.101. Section 552.101 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). The information we have marked consists of files, reports, records, or working papers used or developed in an investigation of child abuse, or a report of alleged or suspected abuse made under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code). As you have not indicated the department has adopted a rule governing the release of this type of information, we assume no such regulation exists. Given that assumption, the information we have marked is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, upon review, we find you have failed to demonstrate any of the remaining information consists of a report of alleged or suspected abuse or neglect of a child made under chapter 261. Further, 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 neglect. As a result, the department may not withhold any of the remaining information 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 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 the information we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.² *See* Gov't Code § 552.130(a). The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address at issue is not of a type excluded by subsection (c). Therefore, the department must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the department must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the motor vehicle record information we have marked under section 552.130 of the Government Code; and (4) the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The remaining information must be released.

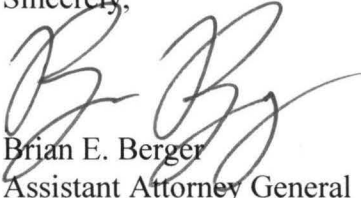
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Berger", written over the typed name.

Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 571628

Enc. Submitted documents

c: Requestor
(w/o enclosures)