



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 20, 2016

Ms. Shannon C. Francis
Assistant County Attorney
Williamson County
405 Martin Luther King Jr. Street, Box 7
Georgetown, Texas 78626

OR2016-11654

Dear Ms. Francis:

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# 611295.

The Williamson County Attorney's Office (the "county attorney's office") received a request for specified photographs. You claim the requested information is 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 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 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 Juvenile Justice Department, 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;

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

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). Upon review, we find the submitted information may have been used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201). However, we note we are unable to determine the age of the alleged victim. Therefore, we must rule conditionally. To the extent the alleged victim at issue was not a child as defined by section 101.003 of the Family Code at the time of the incident at issue, the submitted

information is not subject to section 261.201, and it may not be withheld under section 552.101 on that basis. To the extent the alleged victim at issue was a child as defined by section 101.003 of the Family Code, the submitted information is subject to section 261.201. In that instance, pursuant to section 261.201(k), as the requestor is a parent of the child victim listed in the information, and is not alleged to have committed the abuse or neglect, the information at issue may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(1)(2) states any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Thus, we will address your arguments under section 552.101.

Section 552.101 of the Government Code also encompasses the doctrines of common-law and constitutional privacy. The doctrine of common-law privacy 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. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

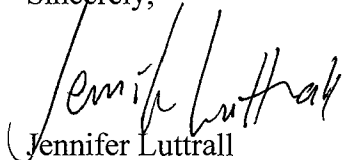
You state, and we agree, the submitted information contains images of individuals in various states of undress, some of whom are identifiable and others who are not. We note, based on our review of the information at issue, these pictures were obtained from publicly available websites. Accordingly, the individuals depicted are generally not afforded protection under common-law or constitutional privacy. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W. 2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain), *Roberts v. Houston Indep. Sch. Dist.*, 788 S.W.2d 107, 111 (Tex. App.—Houston [1st Dist.] 1990, writ denied). Therefore, the county attorney's office may not withhold any of the submitted information under section 552.101 on the basis of common-law or constitutional privacy. As you raise no further exceptions to disclosure, the submitted information must be released.

In summary, to the extent the alleged victim at issue was a child as defined by section 101.003 of the Family Code, the information is subject to section 261.201(k) of the Family Code, and the county attorney's office must release the submitted information to this requestor.¹ To the extent the alleged victim was not a child as defined by section 101.003, the information is not subject to section 261.201 of the Family Code, and the county attorney's office must release the submitted information.

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

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 611295

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹In this instance, because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the county attorney's office must again seek a decision from this office if it receives a request for this information from a different requestor.