



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 10, 2017

Ms. Elizabeth Walker
City Secretary
City of Weslaco
255 South Kansas Avenue
Weslaco, Texas 78596-6285

OR2017-07453

Dear Ms. Walker:

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# 652499.

The Weslaco Police Department (the "department") received a request for all records related to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.132, 552.1325, and 552.148 of the Government Code.¹ We have considered the exceptions 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. This section encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides, in relevant part, 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

¹Additionally, we note that while you claim that the requested information is also excepted under section 552.229 of the Government Code, this provision does not constitute an exception to disclosure. Rather, section 552.229 is procedural in nature. See Gov't Code §§ 552.229 (consent to release information must be in writing), .301(a) (noting that exceptions to disclosure under the Act are found at subchapter C of chapter 552 of Government Code).

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). We note the submitted information may have been used in an investigation by the department under chapter 261 of the Family Code or in providing services as a result of an investigation. *See 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), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). However we are unable to determine the age of the victim in the information at issue. Thus, we must rule conditionally. If the submitted information pertains to an incident involving a victim of alleged or suspected abuse who was under the age of eighteen at the time of the incident at issue, then this information is subject to section 261.201 of the Family Code. In that case, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² If, however, the victim in the information at issue was eighteen years of age or older at the time of the incident, then we find this information is not confidential under section 261.201(a) of the Family Code. In that instance, we conclude the department may not withhold the information at issue under section 552.101 of the Government Code on that basis, and we will address your arguments against disclosure of the submitted information.

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. In this instance, the department seeks to withhold the entirety of the submitted information under section 552.101 in conjunction with common-law privacy. However, the department has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of

²In this case, as our ruling is dispositive, we need not consider your arguments against disclosure of the submitted information.

common-law privacy. Accordingly, the department may not withhold the entirety of the submitted information under section 552.101 of the Government Code on that basis. However, upon review, we find the information we have marked satisfies 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.³

The department raises sections 552.132 and 552.1325 for the remaining information. Section 552.132 provides:

(a) Except as provided by Subsection (d), in this section, “crime victim or claimant” means a victim or claimant under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.

(b) The following information held by the crime victim’s compensation division of the attorney general’s office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

(c) If the crime victim or claimant is awarded compensation under Section 56.34, Code of Criminal Procedure, as of the date of the award of compensation, the name of the crime victim or claimant and the amount of compensation awarded to that crime victim or claimant are public information and are not excepted from [required public disclosure].

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general’s office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim.

(e) If the employee fails to make an election under Subsection (d), the identifying information is excepted from disclosure until the third anniversary

³As our ruling is dispositive, we do not address the remaining argument against disclosure of this information.

of the date the crime was committed. In case of disability, impairment, or other incapacity of the employee, the election may be made by the guardian of the employee or former employee.

Gov't Code § 552.132. We note the information at issue is held by the department, not the crime victim's compensation division of the attorney general's office; therefore, section 552.132(b) is not applicable to this information. Additionally, you provide no representation the victim is an employee of any governmental body. Thus, you have failed to demonstrate the applicability of section 552.132(d) to this information. Accordingly, the department may not withhold any portion of the remaining information under section 552.132 of the Government Code.

Section 552.1325 of the Government Code provides:

(a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

Id. § 552.1325. Upon review, we find none of the remaining information consists of a victim impact statement or information submitted for the purposes of preparing a victim impact statement as defined by article 56.03 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 56.03. Accordingly, none of the remaining information is subject to section 552.1325 of the Government Code and the department may not withhold it on that basis.

In summary, if the submitted information pertains to an incident involving a victim of alleged or suspected abuse who was under the age of eighteen at the time of the incident at issue, then department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family

Code. If, however, the victim in the information at issue was eighteen years of age or older at the time of the incident, then the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and release the remaining 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/bw

Ref: ID# 652499

Enc. Submitted documents

c: Requestor
(w/o enclosures)