



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 10, 2019

Ms. Sara Casares
Office Specialist
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2019-28574

Dear Ms. Casares:

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# 798367(Ref. 130603).

The Edinburg Police Department (the "department") received a request for all police reports involving the requestor's child. You claim the submitted 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 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[.]

Fam. Code § 261.201(a), (k), (l)(2). We note case number 2019-00019581 was used or developed in an investigation 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). Accordingly, we find the information at issue is generally confidential under section 261.201 of the Family Code. In this case, although the requestor is the parent of the child victims named in case number 2019-00019581, the requestor is alleged to have committed the suspected abuse. Thus, the requestor does not have a right of access to case number 2019-00019581 under section 261.201(k). *See id.* § 261.201(k). Accordingly, the department must withhold case number 2019-00019581 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ However, we find the department has failed to demonstrate the remaining information consists of reports of child abuse or neglect, or was used or developed in an investigation under chapter

¹ As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

261. Therefore, we conclude section 261.201 is not applicable to the remaining information and it may not be withheld on that basis.

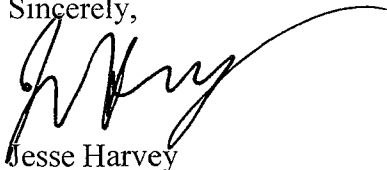
Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. 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). This common-law right to privacy protects the identifying information of a complainant in certain situations based on the facts of the case. See Open Records Decision No. 394 (1983); see also Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense). The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. See *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). We note the requestor has a right of access to her own private information and otherwise private information related to her minor children under section 552.023 of the Government Code, and this information may not be withheld from her under common-law privacy. See Gov't Code § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning herself). Accordingly, with the exception of the requestor's date of birth and the date of birth belonging to the requestor's minor child, the department must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. As it raises no other exceptions to disclosure, the department must release the remaining information.

In summary, the department must withhold case number 2019-00019581 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the requestor's date of birth and the date of birth belonging to the requestor's minor child, the department must withhold all public citizens' dates of birth in the remaining information 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jesse Harvey', with a long, sweeping flourish extending to the right.

Jesse Harvey
Assistant Attorney General
Open Records Division

JHI/eb

Ref: ID# 798367

Enc. Submitted documents

c: Requestor
(w/o enclosures)