



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2015

Ms. Jo'Shae Worley
County Attorney
Terry County
500 West Main Street, Room 208E
Brownfield, Texas 79316

OR2015-13686

Dear Ms. Worley:

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# 570297.

The Terry County Attorney's Office (the "county attorney's office") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 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 the submitted report was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001 (defining “abuse” and “neglect” 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). Therefore, we find the submitted report is generally confidential under section 261.201 of the Family Code. We note, however, the requestor may represent the parent of the child victim listed in the report, and the parent is not alleged to have committed the suspected abuse or neglect. Accordingly, if the requestor does not represent the parent of the child victim listed in the report, then the submitted information is confidential under section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

However, if the requestor does represent the parent of the child victim, then the submitted information may not be withheld from this requestor under section 261.201(a). *Id.* § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). You raise section 552.108 of the Government Code as an exception to disclosure. We note some of the submitted information is subject to section 552.130 of the

Government Code.¹ Therefore, we will address the applicability of these sections to the submitted information.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication.

In this instance, the county attorney's office states it seeks to withhold the submitted information pursuant to section 552.108(a)(2) because "there have been no conviction nor deferred adjudication" pertaining to the incident at issue. However, the county attorney's office also asserts this information is excepted from disclosure under section 552.108 because it pertains to a pending prosecution. Based on the conflicting representations, we find the county attorney's office has failed to demonstrate the applicability of section 552.108(a)(2) to the information at issue; therefore, the county attorney's office may not withhold the submitted information under section 552.108(a)(2) of the Government Code.

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. *See Gov't Code § 552.130.* We note the requestor has a right of access to her own motor vehicle record information. *See id.* § 552.023. Upon review, the district attorney's office must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

In summary, if the requestor does not represent the parent of the child victim listed in the report, then the county attorney's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor does represent the parent of the child victim listed in the report, then the county attorney's office must withhold the information we have marked under section 552.130 of the Government Code and release the remaining information to this requestor.²

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# 570297

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.