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ATTORNEY GENERAL OF TEXAS

December 21, 2016

Ms. Yvette Aguilar
Assistant City Attorney
Legal Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2016-28261

Dear Ms. Aguilar:

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# 638775 (Ref. No. CW15).

The Corpus Christi Police Department (the "department") received a request for information pertaining to a police report involving the requestor's clients. The department claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions the department claims and reviewed the submitted information.

Initially, the department informs us the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-22627 (2016). In Open Records Letter No. 2016-22627, we determined, in relevant part, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. In this instance, however, the requestor is the legal representative of the child victim at issue and is not suspected of committing the alleged abuse. Accordingly, this requestor may have a special right of access to information pertaining to the child victim at issue under section 261.201(k) of the Family Code. Fam. Code § 261.201 (k). Thus, we find the circumstances have changed in regard to this ruling and the department may not rely on Open Records Letter No. 2016-22627 as a previous determination in this instance. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior

¹Although the department does not cite to section 552.130 of the Government Code in its brief to this office, we understand the department to raise this section based on its markings.

ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Accordingly, we will consider the department's arguments against disclosure of 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 department 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:

...

(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. *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 submitted report is generally confidential under section 261.201 of the Family Code. We note, however, the requestor is the legal representative of the child victims listed in the report and is not alleged to have committed the suspected abuse. Thus, the submitted report 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). The department raises sections 552.108 and 552.130 of the Government Code as exceptions to disclosure. Thus, we will consider the applicability of these exceptions to the submitted report.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department states the submitted report relates to an active criminal investigation and release of the information would interfere with that investigation. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable. Accordingly, the department may withhold the information it has marked under section 552.108(a)(1) of the Government Code.²

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. Accordingly, the department must withhold the motor vehicle record information it has marked under section 552.130 of the Government Code.

In summary, the department may withhold the information it has marked under section 552.108(a)(1) of the Government Code. The department must withhold the motor

²As our ruling is dispositive, we need not address the department’s remaining argument against disclosure of this information.

vehicle record information it has marked under section 552.130 of the Government Code. The department must release the remaining information.³

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 638775

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a special right of access to the information being released in this instance. *See* Fam. Code § 261.201(k); *see also* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that party's representative, solely on grounds that information is considered confidential by privacy principles). Accordingly, if the department receives another request for this information from a different requestor, then the department should again seek a ruling from this office.