



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 22, 2016

Ms. Morgan D. Vaughan  
Assistant Criminal District Attorney  
Civil Division  
Lubbock County  
P.O. Box 10536  
Lubbock, Texas 79408-3536

OR2016-28322

Dear Ms. Vaughan:

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# 639105.

The Lubbock County Sheriff's Office (the "sheriff's office") received a request for information pertaining to 9-1-1 calls from two specified telephone numbers and reports pertaining to a specified address. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they do not pertain to the two specified phone numbers or the specified address. The sheriff's office need not release nonresponsive information in response to this request, and this ruling will not address that 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.

Fam. Code § 261.201(a), (k). You state the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (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). Upon review, we agree the information we have marked is within the scope of section 261.201 of the Family Code.

You have not indicated the sheriff’s office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information we have marked is confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the sheriff’s office must withhold the information we have marked in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

However, in this instance, the first requestor is a parent of the child victim listed in the information at issue. We note the information at issue reflects the requestor is also alleged

to have committed the suspected abuse or neglect. Accordingly, this requestor does not have a right of access to the information pursuant to section 261.201(k). *See id.* § 261.201(k). Thus, we conclude the information we have marked must be withheld in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code.

Although you raise section 261.201 for the remaining information, you have failed to demonstrate any portion of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established the information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Therefore, the sheriff’s office may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See Open Records Decision No. 649 (1996)*. You indicate the sheriff’s office is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. We conclude the sheriff’s office must withhold the telephone numbers we have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if they consist of originating telephone numbers furnished by a 9-1-1 service supplier. If the marked information does not consist of originating telephone numbers provided by a 9-1-1 service supplier, it may not be withheld under section 552.101 in conjunction with section 772.318.

Section 552.108 of the Government Code states, in pertinent part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [is excepted from required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body claiming an exception to disclosure under section 552.108 must explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), held "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." 873 S.W.2d at 380. However, a party is not prevented from requesting specific documents or categories of documents relevant to issues in a pending case, even though some or all of the documents may be contained in an attorney's files. *National Union*, 863 S.W.2d at 461.

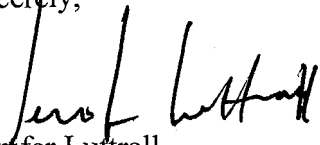
Upon review, we find the request for information, which seeks information pertaining to two specified phone numbers and a specified address from the sheriff's office, does not constitute a request for a prosecutor's litigation file for purposes of section 552.108. Further, we find you have failed to demonstrate the information at issue was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or represents the mental impressions or legal reasoning of an attorney representing the state. Accordingly, the sheriff's office may not withhold the remaining information under section 552.108(a)(4) or section 552.108(b)(3) of the Government Code in conjunction with *Curry*.

In summary, the sheriff's office must withhold the information we have marked from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The information we have marked must be withheld in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code. The sheriff's office must withhold the telephone numbers we have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if they consist of originating telephone numbers furnished by a 9-1-1 service supplier. 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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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# 639105

Enc. Submitted documents

c: Requestor  
(w/o enclosures)