



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 22, 2017

Mr. Brandon S. Shelby
City Attorney
City of Sherman
P.O. Box 1106
Sherman, Texas 75091-1106

OR2017-05872

Dear Mr. Shelby:

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# 650211 (OR-2657 (SPD# 218), OR-2668 (SPD# 006, 008)).

The Sherman Police Department (the "department") received three requests from two separate requestors for a specified report. You claim the submitted information is excepted from disclosure under section 552.108(a)(2) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 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 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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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.

(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). Upon review, we find the submitted information was used or developed in an investigation by the department of alleged child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *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). Thus, we find the submitted information is within the scope of section 261.201(a) of the Family Code. In this case, the second requestor does not have a right of access to the submitted information and it must be withheld in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we note the first requestor is a parent of the child victim named in the report, and is not alleged to have committed the abuse or neglect. Therefore, the department may not withhold the submitted information from the first requestor under section 261.201(a). *See* Fam. Code § 261.201(k). However, section 261.201(l)(2) states any information excepted from required disclosure under the Act or other law must still be withheld from disclosure. *See id.* § 261.201(l)(2). Thus, we will consider your argument under section 552.108 of the Government Code.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.*; *see also id.* § 552.301(e)(1)(A). You indicate the submitted information pertains to an investigation that concluded in a result other than conviction or deferred adjudication. Based on your representation, we find section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108(a)(2) does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559, 560-61 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the submitted information from the first requestor under section 552.108(a)(2) of the Government Code.

In summary, the department must withhold the submitted information from the second requestor in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, which must be released, the department may withhold the submitted information from the first requestor under section 552.108(a)(2) of the Government Code.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 650211

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)