



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 8, 2017

Ms. Melinda Brewer  
Assistant District Attorney  
Collin County  
2100 Bloomdale Road, Suite 100  
McKinney, Texas 75071

OR2017-12633

Dear Ms. Brewer:

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# 661097.

The Collin County District Attorney's Office (the "district attorney's office") received a request for the entire prosecution files for five specified cases. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit written comments stating why information should or should not be released).

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

*Id.* § 552.022(a)(1). The submitted information consists of completed investigations subject to section 552.022(a)(1). The district attorney's office must release the submitted information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although you raise section 552.111 of the Government Code for the submitted information, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See* Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the information at issue may not be withheld under this exception. The attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure. *See* TEX. R. CIV. P. 192.5. The Texas Supreme Court has held "[t]he Texas Rules of Civil Procedure are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to "actions of a civil nature." *See* TEX. R. CIV. P. 2. Thus, because the requested documents relate to criminal cases, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply, and the district attorney's office may not withhold the information at issue on that basis. However, we will consider your argument to withhold this information under section 552.108 of the Government Code. *See* Gov't Code § 552.022(a)(1). Additionally, as section 552.101 of the Government Code can make information confidential under the Act, we will also consider your arguments under this section.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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:

(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 . . . 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(1)-(2). Upon review, we agree the submitted information was used or developed in investigations of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201 of Family Code). Accordingly, we find the submitted information is subject to section 261.201 of the Family Code. As you do not indicate the district attorney’s office has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the district attorney’s office must generally withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup> *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

However, the requestor is the legal representative of one of the alleged child victims at issue and that child victim is now an adult. Therefore, the district attorney’s office may not withhold the information pertaining to the requestor’s client, which we marked and indicated for release, from the requestor on the basis of section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(k). Section 261.201(l)(1), however, states the identity of a victim or

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<sup>1</sup>As our ruling is dispositive for this information, we do not address your other arguments against its disclosure.

witness under eighteen years of age who is not a child of the parent, managing conservator, or other legal representative requesting the information must be withheld. *Id.* § 261.201(1)(1). Thus, the district attorney's office must withhold the personally identifiable information of a child victim or witness who is not the requestor's client under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code. *Id.* Furthermore, section 261.201(1)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). You assert some of the remaining information is excepted from public disclosure under section 552.108 of the Government Code. Therefore, we will consider your remaining argument against disclosure.

Section 552.108 of the Government Code states, in 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.

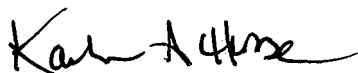
Gov't Code § 552.108(a)(4), (b)(3). A governmental body claiming an exception to disclosure under section 552.108 must explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). Upon review, we find you have failed to demonstrate the information at issue was prepared by the district attorney's office 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 district attorney's office may not withhold the information at issue under section 552.108(a)(4) or section 552.108(b)(3) of the Government Code.

In summary, with the exception of the information we marked and indicated for release, the district attorney's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup> In releasing the information we marked and indicated, the district attorney's office must withhold the personally identifiable information about a child victim or witness who is not the requestor's client under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family 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](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,



Kaelan A. Henze  
Assistant Attorney General  
Open Records Division

KAH/eb

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<sup>2</sup>Because the requestor has a right of access to the information, the district attorney's office must again seek a decision from this office if it receives a request for this information from a different requestor. *See* Fam. Code § 261.201(k); Gov't Code § 552.023.

Ref: ID# 661097

Enc. Submitted documents

c: Requestor  
(w/o enclosures)