



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2010

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, 1st Floor
Conroe, Texas 77301

OR2010-00606

Dear Mr. Walker:

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# 367211.

The Montgomery County Sheriff's Department (the "sheriff") received a request for two specified incident reports and the reason a named individual is in prison. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have only submitted for our review one of the specified incident reports. Thus, to the extent information responsive to remaining requested information existed when the request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 information protected by other statutes, including 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 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:

- (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; and
- (3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)-(l). You state that the submitted information was used or developed in an investigation into alleged child abuse or neglect. Based on your representations and our review of the information at issue, we agree that the submitted

information is subject to section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” and “neglect” for purposes of Family 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). However, the requestor is the parent of the child victim listed in the submitted report, and the parent is not alleged to have committed the suspected abuse. In this instance, the sheriff may not use section 261.201(a) to withhold this information from this requestor. *Id.* § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). We have marked the information identifying the reporting party that must be withheld under section 261.201(l)(3) of the Family Code. Additionally, section 261.201(l)(2) of the Family Code states that information subject to any other exception to disclosure under the Act or other law must also be redacted. *Id.* § 261.201(l)(2). We note some of the remaining information is also subject to section 552.130 of the Government Code.¹ Accordingly, we will consider the applicability of that section to the information at issue.

Section 552.130 provides that information relating to a motor vehicle operator’s license or driver’s license issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1). Accordingly, the sheriff must withhold the Texas driver’s license numbers we have marked under section 552.130 of the Government Code.²

In summary, the sheriff must withhold the information we have marked under section 261.201(l)(3) of the Family Code, and the Texas driver’s license number we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.³

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).

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion.

³We note the requestor has a special right of access to the information being released. *See* Fam. Code § 261.201(k). If the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office. In addition, we note that the information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. However, the sheriff may not withhold from this requestor the social security number belonging to the requestor or her child, as this requestor has a special right of access to that information under section 552.023 of the Government Code. *See id.* § 552.023 (person or the parent of minor has a special right of access to information that is excepted from public disclosure under laws intended to protect that person’s or that person’s child’s privacy interest).

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 367211

Enc. Submitted documents

c: Requestor
(w/o enclosures)