



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2010

Ms. Connie R. Helgren
Assistant City Secretary
City of Smithville
P.O. Box 449
Smithville, Texas 78957

OR2010-01448

Dear Ms. Helgren:

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# 369468.

The City of Smithville (the "city") received a request for information related to two specified incidents. You claim that 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.

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. This section 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 of Family and Protective Services] 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.

Fam. Code § 261.201(a), (k). Upon review, we find that some of the submitted information was used or developed in an investigation of child endangerment; therefore, the information is generally within the scope of section 261.201 of the Family Code. *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).

In this instance, the requestor is the parent of the child victim listed in the submitted information; however, the submitted information reflects that the requestor is also the individual suspected of child abuse. Accordingly, the requestor does not have a right of access to the information pursuant to section 261.201(k). *See id.* § 261.201(k).

You do not indicate that the city has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given that assumption, we conclude the information we have marked is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor to section 261.201).

However, incident report number 2002060203 is not a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). Furthermore, you have not explained how report number 2002060203 was used or developed in an investigation by the city of child abuse or neglect for purposes of section 261.201(a)(2). Therefore, we find that report number 2002060203 is not confidential under chapter 261, and it may not be withheld under section 552.101 on that basis.

You also claim that incident report number 2002060203 is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) 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.” A governmental body claiming section 552.108 must reasonably explain how and why the release of the

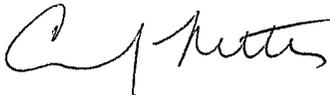
requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You generally state that release of "other information contained in the report . . . will interfere with the investigation." However, you have not demonstrated how the release of report number 2002060203, which is a call for service with no criminal offense listed, would interfere with the detection, investigation, or prosecution of a specific crime. Therefore, you have not met your burden under section 552.108(a)(1). Because you have failed to demonstrate the applicability of section 552.108, the city may not withhold report number 2002060203 under section 552.108 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The remaining information must be released to the requestor.¹

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

¹The information being released contains the requestor's driver's license number, which is information that may be confidential with respect to the general public. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987). We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of 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 decision.

Ref: ID# 369468

Enc. Submitted documents

c: Requestor
(w/o enclosures)