



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 12, 2010

Mr. T. Daniel Santee
City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2010-05083

Dear Mr. Santee:

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# 375576.

The Abilene Police Department (the "department") received a request for copies of case reports and videos of Case No. 08-005775 pertaining to a named individual. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."¹ Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

- (a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code 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. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). We find that the submitted information was used or developed in an investigation under chapter 261. *See* Fam. Code § 261.001(1), (4) (defining “abuse” 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). Therefore, we find the submitted information is generally confidential under section 261.201 of the Family Code.

We note, however, that the requestor is a parent of the child victim listed in the information, and the parent is not alleged to have committed the suspected abuse. As such, the department may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* § 261.201(k). Section 261.201(1)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Thus, the department must withhold the reporting party's identity under section 552.101 in conjunction with section 261.201(1)(3). In addition, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider your remaining argument against disclosure.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a concluded investigation that did not result in a conviction or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to the submitted information.

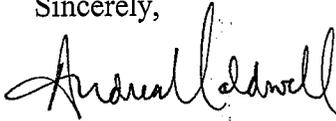
However, section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Thus, the department must release the types of basic information listed in *Houston Chronicle*, including the identity of the complainant. *See* 531 S.W.2d at 186-87. As noted above, the identity of the party who made the report must be redacted. *See* Fam. Code § 261.201(1)(3). Accordingly, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. However, in releasing basic information, the department must withhold the reporting party's identity under section 552.101 in conjunction with section 261.201(1)(3) of the Family Code.²

²We note the basic information being released contains confidential information regarding the alleged child victim to which the requestor has a right of access as the child's parent. *See* Fam. Code § 261.201(k). If the department receives another request for this particular information from a different requestor, then the

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 375576

Enc. Submitted documents

c: Requestor
(w/o enclosures)

department should again seek a decision from this office.