



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 25, 2010

Ms. Yvette Aguilar  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2010-09414

Dear Ms. Aguilar:

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# 384317.

The Corpus Christi Police Department (the "department") received two requests for police report number 1003310049. You claim that the submitted 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. Section 552.101 encompasses 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.

(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; 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 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.* § 261.001(1)(E) (definition of "child abuse" includes indecency with a child under Penal Code section 21.11); *see also* Penal Code § 21.11 (defining "child" for purposes of section 21.11 as a minor younger than 17 years of age). Based on your representations and our review, we agree the submitted information falls within the scope of section 261.201. You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the submitted information is generally confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). You state that although the first requestor has submitted documentation that the child's parent has signed an Authorization Agreement for Nonparent Relative, the agreement specifically states it does not confer on the relative the rights of a managing or possessory conservator or legal guardian. Further, we

note there is no indication that the first requestor is the legal representative of the child at issue. Thus, based on your representations and our review, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code from the first requestor.<sup>1</sup>

However, the second requestor is the parent of the alleged child victim and is not alleged to have committed the suspected abuse. As you acknowledge, the submitted report may not be withheld from the second requestor under section 261.201(a). Gov't Code § 261.201(k). Section 261.201(l)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Thus, the department must withhold the reporting party's identity, which you have marked, under section 552.101 in conjunction with section 261.201(l)(3). In addition, section 261.201(l)(2) provides that, notwithstanding section 261.201(k), any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). You assert portions of the submitted report are excepted from public disclosure under section 552.108 of the Government Code. Accordingly, we will consider your remaining argument against disclosure.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted report pertains to a pending criminal case. Based upon your representation and our review, we find the release of the information you have marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the submitted information in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the identity of the reporting party from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. The department may withhold

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

the information you have marked from the second requestor under section 552.108(a)(1) of the Government Code. The remaining information must be released to the second requestor.<sup>2</sup>

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](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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/jb

Ref: ID# 384317

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the information being released to the second requestor contains confidential information regarding the alleged child victim that the requestor may obtain as the child's parent. *See* Fam. Code § 261.201(k). Accordingly, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.