



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2010

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

OR2010-11629

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#389005.

The Corpus Christi Police Department (the "department") received two requests for incident report #1005130060. 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) Except as provided by Section 261.203, the 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:

(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 information at issue concerns an investigation into an allegation of child abuse. *See id.* § 261.401(a) (defining “abuse” for purposes of subchapter E of chapter 261 of the Family Code). Upon review of your arguments and the information at issue, we conclude that the submitted information consists of files, reports, records, or working papers used or developed in an investigation made under chapter 261 of the Family Code. Accordingly, we find the submitted information is generally confidential under section 261.201 of the Family Code. However, as you acknowledge, one of the requestors is the mother of the child victim listed in the submitted information, and

she is not alleged to have committed the suspected abuse. Accordingly, the department may not withhold the submitted information from the requestor who is the mother of the child victim under section 261.201(a). *Id.* § 261.201(k). The other requestor, however, is not one of the individuals who is authorized to receive access to the submitted information; therefore, the department must withhold the submitted information from this requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Although the department may not use section 261.201(a) to withhold the report from the requestor who is the mother of the child victim, we note that section 261.201(1)(3) provides that before a parent can copy and inspect a record of a child under section 261.201(k), the identity of the party who made the report must be redacted. *Id.* § 261.201(1)(3). Therefore, the department must withhold the identifying information of the reporting party, which you have marked, under section 261.201(1)(3). Additionally, section 261.201(1)(2) states any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). You assert portions of the submitted information are otherwise subject to section 552.108 of the Government Code. Accordingly, we will consider the applicability of section 552.108 to this information.

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to an active criminal investigation. 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 non-parent requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the identifying information of the reporting party from the requestor who is the mother of the child under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The department may withhold the information you have marked under section 552.108 of the Government Code from the requestor who is the mother of the child victim.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

Ref: ID#389005

Enc. Submitted documents

c: Requestor
(w/o enclosures)