



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2010

Ms. Heather Stebbins
Assistant City Attorney
City of Kerrville
800 Junction Highway
Kerrville, Texas 78028-2215

OR2010-14823

Dear Ms. Stebbins:

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# 395185.

The Kerrville Police Department (the "department") received a request for a specified police report. You indicate the department need not comply with the request pursuant to section 552.028 of the Government Code.¹ Alternatively, you claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.028 of the Government Code provides in relevant part:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

¹Although you cite section 552.027 of the Government Code, section 552.028 of the Government Code is the correct exception for the substance of your argument.

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028(a)-(b). You argue that the requestor made the present request for information as a representative of an inmate. You state the suspect in the report at issue is an inmate confined by the Texas Department of Corrections, and you argue that the requestor made the present request for information as an agent of this incarcerated individual. The requestor, in this instance, is the mother of the inmate and included the name of the incarcerated individual on the request form. However, the fact that the requestor is the inmate's mother does not in itself establish that she submitted the request as an agent of the inmate. As you have not provided any additional information establishing that the requestor is in fact acting as an agent of an inmate, we cannot conclude that section 552.028 is applicable in this instance. Accordingly, we will address your argument against disclosure under the Act.

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 exception encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant part:

(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.

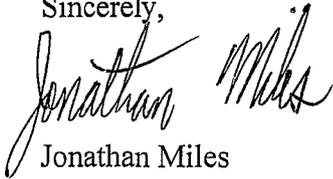
Fam. Code § 261.201(a). The submitted incident report and related documents were used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261); Penal Code § 22.024(c) (defining "child" for purposes of injury to a child as person 14 years of age or younger). Thus, we find the submitted information is within the scope of section 261.201.

You do not indicate the department has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude the submitted information is confidential pursuant to section 261.201 of the Family Code, and the department must withhold it in its entirety under section 552.101 of the Government Code. As this ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/eeg

Ref: ID# 395185

Enc. Submitted documents

c: Requestor
(w/o enclosures)