



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 10, 2010

Ms. Leann M. Quinn  
City Secretary  
City of Cedar Park  
600 North Bell Boulevard  
Cedar Park, Texas 78613

OR2010-17101

Dear Ms. Quinn:

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# 399626 (Cedar Park Reference No. 10-638).

The City of Cedar Park (the "city") received a request for records of a specified interview. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the submitted video recording was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2009-07359 (2009) and 2009-12075 (2009). In those rulings, we concluded the city's police department

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<sup>1</sup>You state the submitted video recording was released to the requestor's attorney in accordance with a subpoena. *See* Gov't Code § 552.0055 (subpoena duces tecum or a request for discovery issued in compliance with statute or rule of civil or criminal procedure is not considered to be a request for information under the Act). If a governmental body voluntarily releases information to a member of the public, such information may not later be withheld from release to the public unless it is confidential under law; however, the release of the information at issue pursuant to a subpoena is not a voluntary release of information for purposes of section 552.007. *See id* § 552.007; *see also* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor of section 552.007), 454 at 2 (1986) (where governmental body disclosed information because it reasonably concluded it had constitutional obligation to do so, it could still invoke law enforcement exception).

must withhold the submitted video recording from the requestor in each of those respective files under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. We note since the issuance of Open Records Letter Nos. 2009-07359 and 2009-12075, the legislature amended section 261.201. *See* Act of May 28, 2007, 80th Leg., R.S., ch. 263, § 12, 2007 Tex. Gen. Laws 421, 428, *amended by* Act of June 1, 2009, 81st Leg., R.S., S.B. 1050, § 1 and Act of June 3, 2009, 81st Leg., R.S., S.B. 1182, § 13 (codified as amendments of Fam. Code § 261.201). Thus, the law on which the previous rulings were based have changed, and the city may not continue to rely on Open Records Letter Nos. 2009-07359 and 2009-12075 as previous determinations. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address your arguments against the disclosure of the submitted video recording.

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 section 261.201 of the Family Code, which provides in part:

(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 [Texas 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). We note the submitted video recording pertains to an investigation of alleged child abuse or neglect. *See 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). Thus, we find the video recording is confidential under section 261.201. *See id.* § 261.201(a). Although the requestor is a parent of the child victim at issue, the requestor is alleged to have committed the suspected abuse or neglect. Therefore, the requestor does not have a right of access under section 261.201(k). Accordingly, the city must withhold the submitted video recording under section 552.101 in conjunction with section 261.201. As our ruling is dispositive, we do not address your remaining argument against disclosure of the video recording.

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 399626

Enc. Submitted documents

c: Requestor  
(w/o enclosures)