



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2011

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.o. Box 2570
Waco, Texas 76702-2570

OR2011-01054

Dear Ms. Benton:

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# 406859 (City of Waco Reference #: LGL-10-1547).

The City of Waco (the "city") received a request for a specified police report. You claim the requested information is excepted from disclosure under sections 552.101 and 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." 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.

Fam. Code § 261.201(a); *see id.* §§ 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011); *see also* Penal Code § 21.11 (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age). Upon review, we find that the submitted information constitutes files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). Thus, this information is generally confidential under section 261.201 of the Family Code. In this instance, however, the requestor is a representative of the Child Protective Services Division of the Texas Department of Family and Protective Services (“DFPS”). Section 261.105(a) provides “[a]ll reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child’s care, custody, or welfare shall be referred immediately to [DFPS].” *See id.* § 261.105(a). In this instance, the suspect of child abuse in the submitted report was responsible for the children’s care, custody, or welfare. Accordingly, section 261.105(a) is applicable, and the confidentiality of section 261.201(a) does not apply. Although you claim the submitted information is excepted under section 552.108 of the Government Code, a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). The city must therefore release the submitted information to the requestor.¹

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

¹We note that because the requestor has a special right of access to this information in this instance, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

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,

A handwritten signature in black ink, appearing to read 'Tamara Wilcox', written in a cursive style.

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/vb

Ref: ID# 406859

Enc. Submitted documents

c: Requestor
(w/o enclosures)