



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 1, 2011

Mr. B. Chase Griffith  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2011-04507

Dear Mr. Griffith:

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# 413280 (ORR# 10-3276).

The McKinney Police Department (the "department"), which you represent, received a request from an investigator with the Child Protective Services (the "CPS") division of the Texas Department of Family and Protective Services (the "DFPS") for case number 05-37822 and a specified case number from 2004. You state some of the requested information has been released. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the CPS. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note you have not submitted information responsive to the request for the specified case number from 2004. To the extent information responsive to that part of the request existed on the date the department received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 information protected by other statutes, such as section 261.201(a) of the Family Code, which provides:

(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:

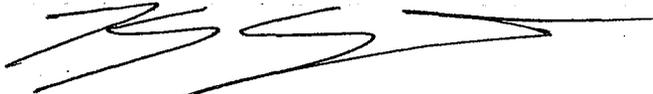
- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You represent the submitted information was used or developed in the department's investigation of sexual abuse of a child. *See id.* § 261.001(1)(E) (definition of "abuse" for purposes of Family Code chapter 261 includes aggravated sexual assault of a child under Penal Code section 21.021); *see also id.* § 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Based on your representations and our review, we find this information is within the scope of section 261.201 of the Family Code. However, the requestor in this instance is a CPS investigator. CPS argues that it has a statutory right of access to the submitted information in accordance with several provisions of chapter 261, including section 261.105(a). Section 261.105(a) provides "[a]ll reports received by a local or state law enforcement agency that alleges 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 is the uncle of the alleged child victim. Pursuant to the Family Code, the uncle is responsible for the child's care, custody, or welfare. *See id.* §§ 261.001(5)(B) (person responsible for child's care, custody, or welfare includes member of child's family or household as defined by Chapter 71), 71.003 (family includes individuals related by consanguinity as determined under section 573.022 of the Government Code); *see also* Gov't Code § 573.022(a)(2) (individuals related by consanguinity if they share common ancestor). 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 552.101 of the Government Code in conjunction with common-law privacy, a specific statutory right of access prevails over the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.— Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Thus, the department must release the submitted information to this requestor pursuant to section 261.105(a) of the Family Code. *See* Attorney General Opinion GA-0106 at 6 (2003) (stating that in accordance with section 261.105(a), DFPS is required to investigate report of child abuse by person responsible for child's care, custody, and welfare with assistance provided by appropriate state or local law enforcement agency).

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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/eeg

Ref: ID# 413280

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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