



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2011

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

OR2011-07443

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# 418899 (McKinney ORR #10-3542).

The City of McKinney (the "city"), 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 records pertaining to a specified case number and two named individuals. 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.

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 an investigation of suspected or alleged child abuse by the city's police department. *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 agree the submitted information is within the scope of section 261.201. However, the requestor in this instance is a CPS investigator. Section 261.105(a) of the Family Code 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 was a member of the household of the alleged child victim when the abuse allegedly occurred. Pursuant to the Family Code, the suspect 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 a member of the child's family or household as defined by Chapter 71), *see also id.* §§ 71.005 (household is a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other), .006 (member of a household includes a person who previously lived in a household). Accordingly, section 261.105(a) is applicable, and the confidentiality of section 261.201(a) does not apply. Thus, the city must release the submitted information to this requestor pursuant to section 261.105(a). *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, 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/bs

Mr. B. Chase Griffith - Page 3

Ref: ID# 418899

Enc. Submitted documents

c: Requestor
(w/o enclosures)