



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2011

Ms. Tamma Willis
McLennan County Sheriff's Office
901 Washington Avenue
Waco, Texas 76701

OR2011-09725

Dear Ms. Willis:

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# 423307.

The McLennan County Sheriff's Office (the "sheriff") received a request for incident report numbers 11-0196 and 11-0222. You claim that 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. Section 552.101 encompasses section 261.201 of the Family Code, which provides, in part, as follows:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). We find that the incident report number 11-0222 was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *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). Thus, incident report number 11-0222 is generally confidential under section 261.201 of the Family Code. However, the requestor is a parent of the child victim in incident report number 11-0222, and she is not alleged to have committed the alleged or suspected abuse. Thus, in this instance, the sheriff may not use section 261.201(a) to withhold incident report number 11-0222 from this requestor. *Id.* § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Accordingly, the sheriff must withhold the reporting party’s identifying information in incident report number 11-0222, which we have marked, under section 261.201(l)(3) of the Family Code.

You also raise section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code for incident report number 11-0196. However, we find incident report number 11-0196 pertains to an alleged criminal trespass involving adults and was not used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. Accordingly, the sheriff may not withhold incident report number 11-0196 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

We note incident report number 11-0196 contains information that is subject to section 552.130 of the Government Code. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See*, Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). We note, however, section 552.130 protects privacy interests. In this instance, the requestor is the spouse of one of the individuals whose motor vehicle record information is at issue and may be acting as her spouse's authorized representative. Thus, the requestor may have a right of access to her spouse's motor vehicle record information under section 552.023. Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds information is considered confidential under privacy principles). If the requestor is an authorized representative of her spouse, then she has a right of access under section 552.023 to her spouse's information, and it may not be withheld from her under section 552.130. If the requestor is not an authorized representative of her spouse, then this information must be withheld under section 552.130. The remaining marked motor vehicle record information must be withheld under section 552.130.¹

In summary, the sheriff must withhold the identifying information of the reporting party we have marked in incident report number 11-0222 under section 261.201(1)(3) of the Family Code.² The sheriff must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, the sheriff may not withhold the motor vehicle record information pertaining to the requestor's spouse if the requestor is

¹We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

²We note that the requestor has a special right of access to the information being released in incident report number 11-0222 under section 261.201(k) of the Family Code. Because such information is confidential with respect to the general public, if the sheriff receives another request for this information from a different requestor, the sheriff must again seek a ruling from this office.

acting as her spouse's authorized representative. The remaining information must be released.³

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 423307

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released in incident report number 11-0196 contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023. Thus, if the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office. We further note the information being released contains social security numbers, including the social security number of the requestor and her spouse. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b). However, section 552.147 is based on privacy principles; therefore, the requestor has a right of access to her own social security number and that of her spouse if she is acting as her spouse's authorized representative. See generally *id.* § 552.023(b).