



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2011

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2011-09895

Dear Ms. Graham:

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# 423596.

The Mesquite Police Department (the "department") received a request for a specified report. You state the department will redact a social security number pursuant to section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent

¹Section 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. Gov't Code § 552.147(b).

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.

(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). You state, and we agree, the submitted information was used or developed by the department in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* §261.001(1)(E) (definition of child abuse includes aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.021 as a person younger than 17 years of age). Thus, we find this report is generally confidential under section 261.201 of the Family Code. However, as you acknowledge, the requestor is a parent of the child victim, and she is not alleged to have committed the alleged or suspected abuse

at issue in the report. Thus, in this instance, the submitted information is not confidential under section 261.201(a)(2) of the Family Code and may not be withheld from this requestor under section 552.101 of the Government Code on this basis. Fam. Code § 261.201(k).

We note, however, a portion of the submitted information, which we have marked, contains a separate report of alleged or suspected child abuse. *See id.* § 261.201(a)(1). Further, the information at issue reflects the requestor is suspected of having committed the alleged abuse. Accordingly, we conclude none of the exceptions in subsection (k) apply to this information. *See id.* § 261.201(k) (parental exception to section 261.201(a) inapplicable where parent alleged to have committed abuse/neglect at issue). Thus, the information we have marked is within the scope of section 261.201(a)(1) of the Family Code and must be withheld under section 552.101 of the Government Code.

Further, subsection 261.201(l)(2) of the Family Code states, before a parent may inspect or copy a record or file concerning the child under section 261.201(k), any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). You assert a portion of the report is excepted from public disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country[.]

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(a)(1)). Upon review, we agree the department must withhold the driver's license number you have marked under section 552.130 of the Government Code.²

Lastly, subsection 261.201(l)(3) of the Family Code states, before a parent may inspect or copy a record or file concerning the child under section 261.201(k), the identity of the reporting party must be withheld. Fam. Code § 261.201(l)(3). Accordingly, the department must withhold the identifying information of the reporting party we have marked pursuant to section 552.101 of the Government Code in conjunction with section 261.201(l)(3).

In summary, the department must withhold the report of alleged or suspected child abuse we have marked under section 552.101 of the Government Code in conjunction with

²We 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 a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion.

section 261.201(a)(1) of the Family Code. The department must withhold the driver's license number you have marked under section 552.130 of the Government Code. The department must withhold the identifying information of the reporter we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The department must release the remaining information to the requestor.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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/em

Ref: ID# 423596

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Because the requestor has a right of access to the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.