



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2011

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2011-10040

Dear Mr. Alicie:

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# 423899.

The Baytown Police Department (the "department") received three requests from the same requestor for information pertaining to three specified cases. You state you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You state some of the requested information has been released. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 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 government 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 [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). You inform us that case numbers 2011-5179 and 2011-5296 were used or developed in an investigation of alleged or suspected child abuse by the department and the Texas Department of Family and Protective Services, Child Protective Services division under chapter 261 of the Family Code. Based on your representation and our review, we agree this information falls within the scope of section 261.201(a). *See 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), 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261). Thus, case numbers 2011-5179 and 2011-5296 are generally confidential under section 261.201 of the Family Code. However, the requestor

is a parent of the child victim, and he is not alleged to have committed the alleged abuse. Thus, in this instance, the department may not use section 261.201(a) to withhold the submitted information from this requestor. *Id.* § 261.201(k). As you acknowledge, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider your argument under section 552.108 of the Government Code for case number 2011-5296.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state the information you marked in case number 2011-5296 concerns a criminal investigation that is closed and did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude the department may withhold the information you have marked in case number 2011-5296 under section 552.108(a)(2) of the Government Code.

You have marked some information in the remaining information under section 261.201(l)(3) of the Family Code, which states when releasing a report under subsection (k), the identity of the reporting party must be withheld. Fam. Code § 261.201(l)(3). We note that some of the information you have marked under section 261.201(l)(3) does not consist of the identity of the reporting party. Accordingly, with the exception of the information we have marked for release, the department must withhold the information you have marked and the additional information we have marked in the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

In summary, the department may withhold the information you have marked in case number 2011-5296 under section 552.108(a)(2) of the Government Code. With the exception of the information we have marked for release, the department must withhold the information you have marked and the additional information we have marked in the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. The remaining information must be released to this requestor.²

²We note the requestor has a special right of access to the information the department is releasing. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/em

Ref: ID# 423899

Enc. Submitted documents

c: Requestor
(w/o enclosures)