



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2011

Mr. Joseph J. Gorfida, Jr.
Assistant City Attorney
City of Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2011-10774

Dear Mr. Gorfida:

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# 425212 (file number 11-359).

The Richardson Police Department (the "department") received a request for report number 08-097547. You claim that the requested information is 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 that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part:

(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 [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)(2)-(3). Upon review, we agree the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation chapter 261. *See id.* § 261.201(a); see also *id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201), 101.003(a) (defining “child” as a person under eighteen years of age who is not and has not been married and who has not had the disabilities of minority removed for general purposes). Therefore, we conclude the submitted information is generally confidential under section 261.201(a).

However, we note the requestor may be a managing conservator or other legal representative of the listed child victim, and is not alleged to have committed the suspected abuse or neglect. As such, this requestor may have a right of access to the submitted information pursuant to section 261.201(k). Because we are unable to determine whether the requestor is a managing conservator or other legal representative of the listed child victim, we rule conditionally.

Accordingly, if the requestor is not the managing conservator or other legal representative of the listed child victim, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the requestor is the managing conservator or other legal representative of the listed child victim, then the department may not use section 261.201(a) to withhold the information at issue from this requestor. *See id.* § 261.201(k). However, we note section 261.201(l)(3) provides before a managing conservator or other legal representative can copy and inspect a record of a child under section 261.201(k), the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(3). Further, section 261.201(l)(2) states any information excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address your argument against disclosure under section 552.108 of the Government Code.

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor 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). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.302(e)(1)(A). You state the investigation at issue did not result in a conviction or deferred adjudication. Based on your representations and our review, we conclude section 552.108(a)(2) applies to the submitted information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes the complainant’s identity. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). However, before releasing basic information, section 261.201(l)(3) requires the department to withhold the reporting party’s identity, which we have marked. Accordingly, with the exception of the rest of the basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.

In summary, if the requestor is not the managing conservator or other legal representative of the child victim, the department must withhold the submitted information in its entirety under section 552.101 in conjunction with section 261.201(a) of the Family Code. If the requestor is the managing conservator or other legal representative of the child victim, then with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.¹ However, in releasing basic information, the department must withhold the reporting party's identity, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 425212

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As noted, in this case the requestor would have a special right of access under section 261.201(k) of the Family Code to the information being released. Accordingly, if the department should receive another request for this information from a different requestor, the department should again request an opinion from this office.