



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 6, 2011

Ms. S. McClellan  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2011-12866

Dear Ms. McClellan:

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# 428936 (DPD Request Nos. 2011-5554 and 2011-5584).

The Dallas Police Department (the "department") received two requests for a specified service report. You claim 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 representative sample of information.<sup>1</sup>

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 information protected by other statutes, including section 261.201 of the Family Code. This section provides as follows:

- (a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] and may be

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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[.]

Fam. Code § 261.201(a), (k), (l)(2). You represent the submitted information was used or developed in the department's investigation of alleged child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code); *see also* Penal Code § 22.04(c) (defining "child" for purposes of injury to a child as person 14 years of age or younger). Thus, we find the submitted information is within the scope of section 261.201 of the Family Code.

We note the first requestor is the father of the child victim listed in the submitted information. However, this parent is alleged to have committed the alleged abuse. Therefore, the first requestor does not have a right of access under section 261.201(k). *See*

Fam. Code § 261.201(k). Accordingly, the submitted information must be withheld from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). We note the second requestor is the mother of the child victim listed in the submitted information and is not alleged to have committed the alleged abuse. Therefore, the department may not withhold the submitted information from the second requestor under section 261.201(a). *See* Fam. Code § 261.201(k). Section 261.201(l)(2) states, however, that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider whether the submitted information may be withheld from the second requestor under section 552.108 of the Government Code.

You have marked portions of the submitted information under section 552.108(a)(1) of the Government Code. This section excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal case. Based upon your representation and our review, we conclude that release of the information you have marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold this information from the second requestor under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department may withhold the information you have marked from the second requestor under section 552.108 of the Government Code. The remaining information must be released to the second requestor.<sup>2</sup>

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.

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<sup>2</sup>We note the second requestor has a special right of access to the information being released under section 261.201(k) of the Family Code. If the department receives another request for this same information from an individual who does not have a right of access to the information, the department should request another ruling for this office. *See* Gov’t Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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](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,

A handwritten signature in blue ink, appearing to read 'K. Conyer', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/sdk

Ref: ID# 428936

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)