



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2011

Captain Greg Minton
City of Leander
705 Leander Drive
Leander, Texas 78641

OR2011-13272

Dear Captain Minton:

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# 431360.

The Leander Police Department (the "department") received a request for a specified incident report, including Child Protective Services ("CPS") records. You indicate the department does not maintain the requested CPS records, but directed the requestor to request that information directly from CPS.¹ You claim 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." This section encompasses information protected by other statutes, including section 261.201 of the Family Code.² Section 552.101 of the Government Code excepts from disclosure

¹A governmental body need not take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds information on behalf of the governmental body that received the request for it. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989).

²Although you also raise former section 34.08 of the Family Code, which is the predecessor to section 261.201 of the Family Code, we note former section 34.08 has been repealed and is no longer in effect. *See* Act of April 20, 1995, 74th Leg., R.S., ch. 20, § 2, 1995 Tex. Gen. Laws 113, 282.

“information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides in relevant part as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

Fam. Code § 261.201(a), (k). You assert the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Upon review, we find the submitted information is within the scope of section 261.201(a). However, the requestor states the requestor is a parent of the child victim at issue in the submitted information. *See id.* § 261.201(k). If the requestor is a parent of the child victim, then the department may not withhold the submitted information from the requestor on the basis of section 261.201(a). *See id.* It is also unclear whether the requestor was alleged to have committed the abuse or neglect. *See id.* Thus, if the requestor is a parent of the child victim, but is alleged to have committed the abuse or neglect, then the requestor does not have a right of access to this information under section 261.201(k). *See id.* § 261.201(k). Accordingly, we must rule conditionally. If the requestor both is a parent of the child victim and is not alleged to have committed the abuse or neglect, then the department must release the submitted information to the requestor

pursuant to section 261.201(k) of the Government Code.³ If however, the requestor either is not a parent of the child victim or is alleged to have committed the abuse or neglect, then the department must withhold the submitted information under section 552.101 in conjunction with section 261.201(a) of the Family Code. See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 431360

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³If the requestor has a special right of access to the submitted information pursuant to section 261.201(k), then the department must again seek a decision from this office if it receives another request for the same information from another requestor.