



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2011

Ms. Erin A. Higginbotham  
Denton, Navarro, Rocha & Bernal, PC  
2500 West William Cannon, Suite 609  
Austin, Texas 78745

OR2011-13757

Dear Ms. Higginbotham:

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# 431821.

The Copperas Cove Police Department (the "department"), which you represent, received a request for report number 11-2136. You state some information has been released to the requestor. You claim the marked portions of the submitted information are 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." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part:

(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 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

...

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)-(l)(1), (l)(3). You represent the submitted information was used or developed by the department in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (defining “abuse” for the purposes of chapter 261 of the Family Code as including offense of continuous sexual abuse under Penal Code section 21.02); Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 21.02 as person under 17 years of age). Accordingly, we determine the submitted information is within the scope of section 261.201. However, as you acknowledge, the requestor in this instance is a parent of the listed child victim and is not alleged to have committed the abuse. Therefore, the submitted information may not be withheld from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k).

However, section 261.201 also provides that before a record concerning a child can be copied or inspected by the child’s parent under section 261.201(k), any personally identifiable information about any other victim or witness under 18 years of age must be redacted. *See id.* § 261.201(l)(1). Further, section 261.201(l)(3) provides that before a parent can copy and

inspect a record under section 261.201(k), the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(3). You have marked the information in the submitted report you assert identifies a witness under 18 years of age and the reporting party. We find some of the information you have marked in the report, which we have marked for release, does not identify the child witness or the reporting party. We agree the remaining information you marked, and the information we marked, is identifying of the child witness or the reporting party. You also state, and we agree, the submitted DVD contains identifying information of the child witness whose identity is confidential under section 261.201(l)(1). You state the department lacks the technological capability to redact the witness's identifying information from the DVD. Thus, except for the information we have marked for release, the department must withhold the information marked in the report, as well as the submitted DVD in its entirety, under section 552.101 of the Government Code in conjunction with subsections 261.201(l)(1) and 261.201(l)(3) of the Family Code.<sup>1</sup> The remaining information must be released to this 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.

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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/akg

---

<sup>1</sup>As our ruling is dispositive, we need not address your argument against the release of this information under section 552.101 of the Government Code in conjunction with common-law privacy.

<sup>2</sup>We note this requestor has a right of access under section 261.201(k) of the Family Code to information that would be confidential with respect to the general public. Thus, if the department receives another request for this same information from a different requestor, the department should resubmit this information and request another decision. *See* Gov't Code §§ 552.301(a), .302.

Ref: ID# 431821

Enc. Submitted documents

c: Requestor  
(w/o enclosures)