



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2011

Ms. Jo Spurger
Administrative Assistant
Somervell County Sheriff's Department
750 East Gibbs Boulevard
Glen Rose, Texas 76043

OR2011-15944

Dear Ms. Spurger:

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# 434777.

The Somervell County Sheriff's Department (the "sheriff") received a request for a specified arrest report. You indicate you have released some of the requested information. You claim that some of 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." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which 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:

(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;

(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). The requested information pertains to an investigation of alleged or suspected child abuse under chapter 261. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes indecency with child under Penal Code section 21.11); *see also* Penal Code § 21.11 (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age). Accordingly, we find the submitted information is within the scope of section 261.201 of the Family Code.

Pursuant to section 261.201(k), an investigating entity generally may not withhold records subject to section 261.201 from a parent who is not suspected of committing the abuse. *See* Fam. Code § 261.201(k). Although the requestor is the parent of the child victim and is not alleged to have committed the abuse, the child victim listed in the report may now be at least eighteen years old. As such, the requestor may no longer have access to his adult child's records under section 261.201(k). *See id.* Thus, we rule conditionally. In the event the child victim listed in the submitted report is now at least eighteen years old, the submitted report must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In the event the child victim listed in the report is under eighteen years old, the sheriff may not use section 261.201(a) to withhold the submitted information from this requestor. *Id.* Section 261.201(l)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Thus, the sheriff 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(l)(3) of the Family Code. In addition, section 261.201(l)(2) states 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). Thus, we will address your argument for the remaining information.

Section 552.101 of the Government Code also encompasses article 57.02 of the Code of Criminal Procedure.¹ Article 57.02(h) provides:

(h) Except as required or permitted by other law or by court order, a public servant or other person who has access to or obtains the name, address, telephone number, or other identifying information of a [sexual offense] victim younger than 17 years of age may not release or disclose the identifying information to any person who is not assisting in the investigation, prosecution, or defense of the case. This subsection does not apply to the release or disclosure of a victim's identifying information by:

- (1) the victim; or
- (2) the victim's parent, conservator, or guardian, unless the parent, conservator, or guardian is a defendant in the case.

Crim. Proc. Code art. 57.02(h). We note article 57.02 was intended to protect the privacy interests of sexual assault victims. *See* SENATE CRIMINAL JUSTICE COMM., BILL ANALYSIS, Tex. S.B. 1392, 70th Leg., R.S. (1987). Therefore, we conclude, if the requestor has a right of access to the report as a parent of the child victim under section 261.201 of the Family Code as discussed above, the requestor also has a special right of access to the victim's identifying information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's

¹Although you cite to article 57.01 of the Code of Criminal Procedure, we note this article provides the definitions for chapter 57. We understand you to raise article 57.02(h) of the Code of Criminal Procedure.

representative to whom information relates on grounds information is considered confidential under privacy principles). As such, the sheriff may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with article 57.02(h) of the Code of Criminal Procedure.

In summary, in the event the child victim listed in the submitted report is now at least eighteen years old, the submitted report must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In the event the child victim listed in the report is under eighteen years old, the sheriff must release the report to this requestor. In releasing the report, however, the sheriff must withhold the information 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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 434777

Enc. Submitted documents

c: Requestor
(w/o enclosures)