



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2011

Mr. Benjamin Sampract
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-16033

Dear Mr. Sampract:

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# 434808 (W011028).

The City of Fort Worth (the "city") received a request for information pertaining to report number 08-76754. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides in 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.

Fam. Code § 261.201(a), (k). You state that the submitted information relates to an investigation of alleged child abuse. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes indecency with child, sexual assault, and aggravated sexual assault under Penal Code sections 21.11, 22.011, and 22.021); *see also* Penal Code §§ 21.11 (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age), 22.011(c)(1) (defining “child” for purposes of sections 22.011 and 22.021 as “a person younger than 17 years of age”), .021(b)(1). Based on your representations and our review, we find that the submitted information falls within the scope of section 261.201(a). While the requestor is the step- parent of the child victim listed in the submitted report, the requestor is alleged to have committed the suspected abuse. Thus, the requestor does not have a right of access to the information at issue under section 261.201(k). *See* Fam. Code § 261.201(k). Accordingly, we conclude the submitted information is generally confidential under section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). However, section 261.201 of the Family Code also provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a).

We note the submitted information includes information obtained from a polygraph examination. Access to information obtained during the course of a polygraph examination is governed by section 1703.306 of the Occupations Code, which is also encompassed by section 552.101, and constitutes “applicable state law” for purposes of section 261.201(a). Section 1703.306 of the Occupations Code provides in relevant part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306. In this instance, the requestor is the polygraph examinee. Thus, if the city determines that disclosure of the information is consistent with chapter 261 of the Family Code, then we find that the city has the discretion to release the requestor's polygraph information, which we have marked, pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (predecessor to section 1703.306 permits, but does not require, examination results to be disclosed to examinees). With the exception of this information, the city must withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the city determines that disclosure of the polygraph information is not consistent with chapter 261 of the Family Code, then the city must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/ag

Ref: ID# 434808

Enc. Submitted documents

cc: Requestor
(w/o enclosures)