



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2012

Ms. Cathy Cunningham
For Town of Argyle
Boyle & Lowry, L.L.P.
4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2012-00633

Dear Ms. Cunningham:

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# 442158.

The Town of Argyle and the Argyle Police Department (collectively, the “town”), which you represent, received two requests from the same requestor for information concerning an incident that occurred on a specified date at a specified location involving a named individual. You claim the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us the town requested clarification of the first request. *See* Gov’t Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You state the town has not received a response to its request for clarification. Accordingly, the town has no obligation at this time to release any information that might be responsive to the first request. However, if the town receives clarification and wishes to withhold any of the information encompassed by the clarified request, you must request another decision from this office at that time. *See id.* §§ 552.301, .302; *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Next, you assert some of the submitted video recordings are education records. The United States Department of Education Family Policy Compliance Office (the “DOE”) has informed

this office that the Family Educational Rights and Privacy Act (“FERPA”) does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.¹ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). FERPA defines “educational agency or institution” as “any public or private agency or institution which is the recipient of [federal funds] under any applicable program.” 20 U.S.C. § 1232g(a)(3). We note the town, which maintains the information at issue, is not an educational institution for purposes of FERPA. *See* Open Records Decision No. 390 at 3 (1983) (City of Fort Worth is not an “educational agency” within FERPA). We note FERPA contains provisions governing access to education records transferred by an educational agency or institution to a third party. In this instance, you state the town obtained the information at issue from the Liberty Christian School (“Liberty”). We are unable to determine if Liberty is an educational institution for purposes of FERPA. Accordingly, to the extent Liberty is an educational institution for purposes of FERPA, we will not address the applicability of FERPA to the video recordings at issue. Such determinations under FERPA must be made by the educational authority from which the education records were obtained, and, thus, the town should contact Liberty and the DOE regarding the applicability of FERPA to this information. However, to the extent Liberty is not an educational institution for purposes of FERPA, we will consider your claims under sections 552.103 and 552.108 of the Government Code for that information, as well as the remaining 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.”² Gov’t Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

(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:

¹We have posted a copy of the DOE’s letter on the Attorney General’s website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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). Upon review of the submitted information, we find it was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Therefore, the submitted information is generally within the scope of section 261.201 of the Family Code.

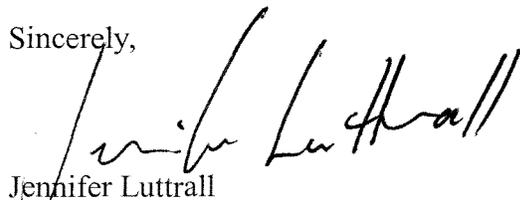
In this instance, the requestor is the parent of the child victim listed in the submitted information. However, the submitted information reflects the requestor is also alleged to have committed the suspected abuse. Accordingly, this requestor does not have a right of access to the information pursuant to section 261.201(k). *See id.* § 261.201(k). Accordingly, the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As we are able to make this determination, we do not address your arguments against disclosure of the submitted information.

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, appearing to read "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 442158

Enc. Submitted documents

c: Requestor
(w/o enclosures)