



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2012

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2012-02061

Dear Mr. Alicie:

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# 444845.

The Baytown Police Department (the "department") received a request for the police report pertaining to a specified incident. You state the department will redact partial social security numbers pursuant to section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.152 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as section 261.201 of the Family Code. Section 261.201 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

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

²Although you raise section 552.151 of the Government Code for portions of the submitted information, we note the 82nd Texas Legislature renumbered section 552.151 to section 552.152 of the Government Code. Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20).

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:

...

- (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)(2)-(3). Upon review, we agree the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201); *see also id.* § 101.003(a) (defining “child” for purposes of the Family Code). Therefore, we conclude the submitted information is generally confidential under section 261.201(a).

We note, however, the requestor may be acting as the authorized representative of the mother of the child victim. Further, we note the mother is not alleged to have committed the abuse or neglect. As such, this requestor may have a right of access to the submitted information

pursuant to section 261.201(k). *See* Fam. Code § 261.201(k). If the requestor is not the authorized representative of this parent, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the requestor is the authorized representative of this parent, then the department may not use section 261.201(a) to withhold the submitted information from this requestor. *See id.* § 261.201(k). Section 261.201(1)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Thus, the department must withhold the identity of the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. Furthermore, section 261.201(1)(2) states any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider your remaining arguments for this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body claiming an exception to disclosure under section 552.108 must reasonably explain how and why this exception applies to the information it seeks to withhold. *See id.* § 552.108, .301(e)(1)(A). You state the submitted information pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on your representations and our review, we agree the department may withhold the information you have marked under section 552.108(a)(2).³

Section 552.130 of the Government Code provides that information relating to a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(2). Therefore, the department must withhold the motor vehicle information you have marked under section 552.130.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. You inform us the information you have marked under section 552.152 relates to undercover police officers. You state release of this information would subject these

³As our ruling is dispositive for this information, we need not address your remaining arguments against release of portions of this information.

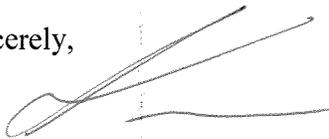
officers to a substantial threat of physical harm. Based on your representations and our review, we conclude you have demonstrated release of the information at issue would subject the officers to a substantial threat of physical harm. Therefore, the department must withhold the information you marked under section 552.152.

In summary, if the requestor is not the authorized representative of the mother of the child victim, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the authorized representative of the mother of the child victim, then: the department (1) must withhold the reporting party's identity under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code; (2) may withhold the information you have marked under section 552.108(a)(2) of the Government Code; (3) must withhold the information you have marked under section 552.130 of the Government Code; (4) must withhold the information you have marked under section 552.152 of the Government Code; and (5) must release the remaining 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 444845

Enc. Submitted documents

c: Requestor
(w/o enclosures)