



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 3, 2012

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

OR2012-04773

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# 450114.

The Baytown Police Department (the "department") received two requests for information pertaining to a specified incident. 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.

Initially, we note some of the submitted information, which we have marked, is not responsive to the first request because it was created after the date the department received the first request. The department need not release this nonresponsive information in response to the first request, and this ruling will not address that information with respect to the first requestor.

Next, you state that the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-01396 (2012). In Open Records Letter No. 2012-01396, we determined that the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, we note the previous ruling does not encompass some of the submitted information which was created after the department received the previous request. Furthermore, we note the second requestor may

have a right of access to the information that was previously ruled upon by this office. Thus, we find that the circumstances have changed, and the department may not rely on Open Records Letter No. 2012-01396 as a previous determination in this instance with respect to the submitted information. *See* Open Records Decision No. 673 (2001). Accordingly, we will address your arguments against disclosure of the submitted information.

Section 552.101 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 made confidential 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:

...

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

Fam. Code § 261.201(a), (k), (l) (3). You claim the submitted information was used or developed by the department in an investigation under chapter 261. *See id.* § 261.001(1), (4) (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). Upon review, we find the submitted information is within the scope of section 261.201(a). You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the submitted information is generally confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold the responsive information from the first requestor under section 552.101 of the Government Code as information made confidential by law.

We note, however, the submitted information reveals that the second requestor may be the managing conservator or other legal representative of the child victim listed in the submitted information, and the second requestor is not alleged to have committed the suspected abuse. As such, the second requestor may have a right of access to the submitted information pursuant to section 261.201(k). As we are unable to determine whether the second requestor is the managing conservator or other legal representative of the child victim, we will rule conditionally. If the second requestor is not the managing conservator or other legal representative of the child victim listed in the submitted information, 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 second requestor is the managing conservator or other legal representative of the child victim listed in the submitted information, pursuant to section 261.201(k), the department may not withhold the submitted information from the requestor under section 261.201(a). *Id.* § 261.201(k). However, we note that section 261.201(l) also provides that before a managing conservator or other legal representative can copy and inspect a record of a child under section 261.201(k), the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(3). Thus, if the second requestor is the managing conservator or other legal representative of the child victim, then the department must redact the identity of the reporting party, which we have marked, under section 552.101 of the Government Code pursuant to section 261.201(l)(3) of the Family Code, but must release the remaining submitted information to the second requestor pursuant to section 261.201(k).

In summary, the department must withhold the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the second requestor is not the managing conservator or other legal representative of the child victim listed in the submitted information, the department must

withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the second requestor is the managing conservator or other legal representative of the child victim, then the department must redact the identity of the reporting party, which we have marked, under section 552.101 of the Government Code pursuant to section 261.201(l)(3) of the Family Code, but must release the remaining submitted information to the second requestor pursuant to section 261.201(k) 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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/akg

Ref: ID# 450114

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)