



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2012

Ms. M. Ann Montgomery-Moran
Assistant County and District Attorney
Ellis County
109 South Jackson
Waxahachie, Texas 75165

OR2012-08132

Dear Ms. Montgomery-Moran:

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# 454808.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for information pertaining to three specified incident reports. You state you have released some of the information. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted.

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 exception encompasses information that other statutes make confidential such as section 261.201(a) of the Family Code, which provides in pertinent 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:

...

(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). You represent incident report numbers 08-12133 and 08-12136 were used or developed in the sheriff's office's investigations of child abuse. *See id.* § 261.001(1) (definition of "abuse" for purposes of Family Code chapter 261); *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). Based on your representations and our review, we find incident report numbers 08-12133 and 08-12136 are within the scope of section 261.201 of the Family Code. In this instance, however, the requestor is the parent of the alleged child victims listed in the reports. Further, the parent is not the individual alleged to have committed the alleged abuse. *See id.* § 261.201(k). Accordingly, the sheriff's office may not use section 261.201(a) to withhold incident report numbers 08-12133 and 08-12136 from the requestor. *Id.* Section 261.201(l)(2) states, however, that any information that is excepted from required disclosure under the Act or other law may still be withheld from

disclosure. *Id.* § 261.201(1)(2). Thus, we will address your remaining arguments against disclosure of incident report numbers 08-12133 and 08-12136.

You also claim portions of incident report numbers 08-12133 and 08-12136 are excepted from disclosure under section 552.108(a)(2) of the Government Code. This section 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state incident report numbers 08-12133 and 08-12136 relate to closed cases that did not result in prosecutions. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to incident report numbers 08-12133 and 08-12136. Accordingly, the sheriff’s office may withhold the information you have marked in incident report numbers 08-12133 and 08-12136 under section 552.108(a)(2) of the Government Code.¹

As previously noted, section 261.201(1)(3) states the identity of the reporting party of alleged child abuse must be withheld. *See* Fam. Code § 261.201(1)(3). Upon review, we find portions of the remaining information contain the identifying information of the reporting party. Therefore, the sheriff’s office must withhold the identifying information of the reporting party, which we have marked, under section 552.101 in conjunction with section 261.201(1)(3) of the Family Code.

In summary, the sheriff’s office may withhold the information you have marked in incident report numbers 08-12133 and 08-12136 under section 552.108(a)(2) of the Government Code. The sheriff’s office must withhold the information we have marked under section 552.101 in conjunction with section 261.201(1)(3) of the Family Code. The remaining information must be released.

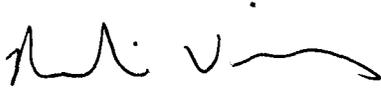
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

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 'Melanie J. Villars', with a stylized flourish at the end.

Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/dls

Ref: ID# 454808

Enc. Submitted documents

c: Requestor
(w/o enclosures)