



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 5, 2012

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2012-08584

Dear Ms. Byles:

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# 456120 (PIR No. W015761).

The City of Fort Worth (the "city") received a request for a specified police report. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the information you 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 other statutes make confidential. Section 261.201 of the Family Code provides in 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:

¹Although you also raise section 552.108 of the Government Code, you have provided no arguments in support of your assertion of that exception. Therefore, this decision does not address section 552.108. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide written comments in support of applicability of any exception it claims).

(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.

...

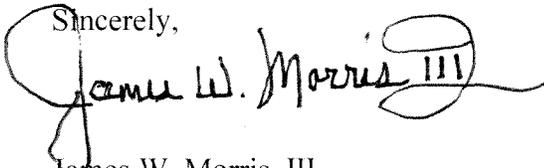
(k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is 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 contend the submitted information is confidential under section 261.201(a). We find the information at issue was used or developed in a child abuse investigation under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a)(2). *See id.* § 261.001(1)(E) (defining “abuse,” for purposes of Fam. Code ch. 261, as including offenses of indecency with a child under Penal Code § 21.11 and sexual assault under Penal Code § 22.011); Penal Code §§ 21.11(a) (defining “child” for purposes of offense of indecency with a child), § 22.011(c) (defining “child” for purposes of offense of sexual assault). We therefore conclude the submitted information is generally confidential under section 261.201(a) of the Family Code. In this instance, however, the requestor may be a parent, managing conservator, or other legal representative of the child who was the victim of the alleged abuse, and the requestor was not accused of committing the alleged abuse. Therefore, pursuant to section 261.201(k), the submitted information may not be withheld from the requestor on the basis of section 261.201(a) if she is the child’s parent, managing conservator, or other legal representative. *See id.* § 261.201(k). As we are unable to determine whether the requestor is the child’s parent, managing conservator, or other legal representative, we must rule conditionally. Thus, if the requestor is not the child’s parent, managing conservator, or other legal representative, then the city 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. But if the requestor is the child’s parent, managing conservator, or other legal representative, the submitted information may not be withheld under section 552.101 on the basis of section 261.201(a) and must be released 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, 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 that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bs

Ref: ID# 456120

Enc: Submitted documents

c: Requestor
(w/o enclosures)