



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2012

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

OR2012-13605

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# 463367.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for two specified police reports. You state you have released one of the requested police reports. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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." 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). Upon review, we agree the submitted information was used or developed in an investigation of alleged or suspected child abuse 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) (defining “abuse” for purposes of Fam. Code ch. 261); Penal Code § 22.04(c) (defining “child,” for purposes of offense of injury to a child, as a person 14 years of age or younger). In this instance, the requestor is a parent of the child victim, and the requestor is not accused of committing the alleged abuse. Therefore, as you acknowledge, the sheriff’s office may not withhold the submitted information from this requestor under section 261.201(a). *See* Fam. Code § 261.201(k). 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(l)(2). Thus, we will address your remaining arguments against disclosure of the submitted information.

You also claim portions of the submitted information are excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from

disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information is related to a currently pending investigation and prosecution. Based on your representation and our review, we conclude the release of the information you have marked would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we find section 552.108(a)(1) is applicable to the information you have marked, and the sheriff’s office may withhold it under section 552.108(a)(2) of the Government Code.

We note 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.¹

In summary, the sheriff’s office may withhold the information you have marked under section 552.108(a)(1) 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.²

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

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

²We note the requestor has a special right of access to the information the sheriff’s office is releasing. *See* Fam. Code § 261.201(k). Because such information is confidential with respect to the general public, if the sheriff’s office receives another request for this information from a different requestor, the sheriff’s office must again seek a ruling from this office.

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 cursive script, appearing to read "Kristi L. Wilkins".

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 463367

Enc. Submitted documents

c: Requestor
(w/o enclosures)