



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 23, 2012

Ms. Terri Bradley  
Records Division  
City of Rosenberg  
2120 Fourth Street  
Rosenberg, Texas 77471

OR2012-16910

Dear Ms. Bradley:

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# 468760.

The Rosenberg Police Department (the "department") received two requests for report numbers 11-45593 and 12-31535. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 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. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

(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 [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[.]

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

Fam. Code § 261.201(a), (k), (l)(2). We find that the submitted information was used or developed in investigations 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). *See id.* § 261.001(1)(E) (definition of child abuse includes indecency with a child under Penal Code section 21.11 and sexual assault under Penal Code section 22.011); *see also* Penal Code §§ 21.11(a) (defining “child” for purposes of Penal Code section 21.11 as a person younger than 17 years of age), 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.011 as a person younger than 17 years of age). In this instance, the first requestor is the parent of the child victim listed in the submitted information. However, this information reflects that the first requestor is alleged to have committed the abuse. Therefore, the submitted information may not be provided to the first requestor pursuant to section 261.201(k). *See* Fam. Code § 261.201(k). Accordingly, the submitted information must be withheld from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, we note the second requestor is also the

parent of the child victim, and she is not alleged to have committed the alleged or suspected abuse. Thus, in this instance, the department may not use section 261.201(a) to withhold the submitted information from this requestor. *Id.* § 261.201(k). Section 261.201(l)(2), however, states any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider your argument under section 552.108 of the Government Code.

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 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 the submitted information concerns criminal investigations that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) is applicable to the submitted information.

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of basic information, the department may withhold the submitted information from the second requestor under section 552.108(a)(2).<sup>1</sup>

In summary, the department must withhold the submitted information in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, which must be released to the second requestor, the department may withhold the submitted information from the second requestor under section 552.108(a)(2) of the Government 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

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<sup>1</sup>Because this requestor has a special right of access to information that would ordinarily be confidential under section 261.201 of the Family Code, the department must again seek a decision from this office if it receives another request for the same information from a different requestor.

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,



**Vanessa Burgess**  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 468760

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)