



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2012

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2012-16944

Dear Ms. Benton:

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# 468770 (City of Waco Reference No. LGL-12-1247).

The City of Waco (the "city") received a request for a specified police report and warrantless arrest affidavit for a named individual. You claim that portions of the submitted information are excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the city has submitted two police reports that do not involve the arrest of the named individual. As such, these reports, which we have marked, are not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release such information in response to this request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Code § 552.101. This section encompasses information protected 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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.

Fam. Code § 261.201(a), (k). Upon our review, we find responsive report numbers 12-13535 and 12-13536 pertain to an investigation of alleged or suspected child abuse or neglect. As such, these reports are within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); Penal Code § 22.041(b)-(c) (defining “child” for purposes of offense of abandoning or endangering a child). Although the submitted information demonstrates the requestor’s client is a parent of the child victim, the requestor’s client is the individual alleged to have committed the abuse or neglect. As such, the requestor does not have a right of access under section 261.201(k) to this information. *See* Fam. Code § 261.201(k). Accordingly, the city must withhold report numbers 12-13535 and 12-13536 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Furthermore, because section 261.201(a) protects all “files, reports, communications,

and working papers" related to an investigation under section 261.201, the city must not release basic front page information. See Fam. Code § 261.201(a)(2). As our ruling is dispositive, we need not address your arguments against disclosure of the responsive information.

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 "Lindsay E. Hale". The signature is written in a cursive style with a large, looped initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 468770

Enc. Submitted documents

c: Requestor
(w/o enclosures)