



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2012

Ms. Judi S. Rawls
Police Legal Counsel
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2012-17808

Dear Ms. Rawls:

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# 470192.

The Beaumont Police Department (the "department") received a request for all records, including a specified video recording, pertaining to a specified incident. You state some of the requested information will be made available to the requestor upon payment of fees. You claim 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. This section encompasses information protected by section 261.201 of the Family Code, which provides in relevant part:

[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 . . . 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[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find the submitted information was used or developed in the department's investigation of alleged abuse or neglect of a child, and therefore, is 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); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261). However, we note the requestor in this instance is the child victim's mother and she is not alleged to have committed the suspected abuse or neglect. Thus, pursuant to section 261.201(k), this information may not be withheld from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Although the department argues it may not release portions of the information at issue pursuant to section 261.201(k) because it was not the investigating agency with respect to that information, we note that the department used the information at issue in its own investigation of the alleged abuse or neglect. *See id.* § 261.201(k) (permitting investigating agency to release information otherwise confidential under section 261.201(a) in certain circumstances). Accordingly, the department was the investigating agency for purposes of the submitted information. We note, however, section 261.201(l)(2) of the Family Code provides that any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we will consider your remaining arguments for the submitted information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, including section 58.007 of the Family Code. Section 58.007(c) reads as follows:

~~Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:~~

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Id. § 58.007(c). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *Id.* § 51.02(2). The incident at issue involves a suspect who is under the age of ten. *See id.* Because the legislature has chosen to protect only the law enforcement records of a child who is between the ages of ten and sixteen at the time of the reported conduct, we find the submitted information is not confidential under section 58.007(c). *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection). Thus, we conclude you have not established the submitted information is confidential under section 58.007 of the Family Code, and the department may not withhold it under section 552.101 on that ground.

You raise section 552.108(a)(2) of the Government Code for the submitted information. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state “the [submitted information] is information that deals with the potential for prosecution of crime, and it has not resulted in conviction or deferred adjudication. You further state “the matters at issue are within the statute of limitations.” However, section 552.108(a)(2) is only applicable if the information at issue is related to a concluded criminal case that did not result in conviction or deferred adjudication. *Id.* § 552.108(a)(2). Thus, having considered your representations, we find you have failed to show the submitted information relates to a criminal case that has concluded in a final result other than conviction or deferred adjudication. Accordingly, we find you have not demonstrated the applicability of

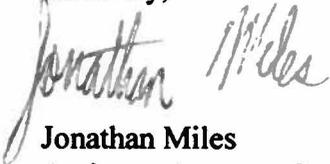
section 552.108(a)(2) and the department may not withhold any of the submitted information under section 552.108(a)(2) of the Government Code.

The submitted information contains an e-mail address subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).¹ See Gov't Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the department must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to their public disclosure. As you have raised no further exceptions, the remaining information must be released to this requestor.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 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

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).

²The requestor has a special right of access under section 261.201(k) of the Family Code to the information being requested. See Fam. Code § 261.201(k). Accordingly, if the department receives another request for this information from a different requestor, then the department should again seek a decision from this office. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

Ref: ID# 470192

Enc. Submitted documents

c: Requestor
(w/o enclosures)
