ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 13, 2012

Ms. Jo Spurger
Administrative Assistant
Somervell County Sheriff's Department
750 East Gibbs Boulevard
Glen Rose, Texas 76043

OR2012-20028

Dear Ms. Spurger:

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# 473681.

The Somervell County Sheriff's Department (the "department") received a request for information related to a specified police report and victim. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 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:
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> > (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.
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> . . .
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> (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.
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> (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:
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> . . .
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> (2) any information that is excepted from required disclosure under [the Act], or other law; and
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> (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 by the department of alleged or suspected child abuse for purposes of section 261.201. *See id.* § 261.001(1)(E) (defining "abuse" for the purposes of chapter 261 of the Family Code as including offense of sexual assault under Penal Code section 22.011); *see also* Penal Code § 22.011(c)(1) (defining "child" for purposes of Penal Code section 22.011 as person under 17 years of age). Therefore, we find the submitted information is within the scope of section 261.201(a). We note the requestor states she is the child victim's Court Appointed Special Advocate and, thus, may be the child victim's legal representative; she is not alleged to have committed the suspected abuse. Thus, we rule conditionally. In the event the requestor is not the child victim's legal representative, the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In the event the requestor is the child victim's legal representative, the department may not use section 261.201(a) to withhold the submitted information from this requestor. *See* Fam. Code § 261.201(k). Section 261.201(l)(3), however, states the identity of the

reporting party must be withheld. *Id.* § 261.201(l)(3). Thus, the department must withhold the reporting party's identity, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. In addition, section 261.201(l)(2) states 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 argument for the remaining information.

Section 552.101 of the Government Code also encompasses article 57.02 of the Code of Criminal Procedure.[1] Article 57.02(d) provides a completed pseudonym form is confidential and may not be disclosed to any person other than a defendant in the case or the defendant's attorney, except by court order. Crim. Proc. Code art. 57.02. We note article 57.02 was intended to protect the privacy interests of sexual assault victims. *See* SENATE CRIMINAL JUSTICE COMM., BILL ANALYSIS, Tex. S.B. 1392, 70th Leg., R.S. (1987). Therefore, we conclude, if the requestor has a right of access to submitted information as a legal representative of the child victim under section 261.201 of the Family Code as discussed above, the requestor also has a special right of access to the completed pseudonym form pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds information is considered confidential under privacy principles). As such, the department may not withhold the completed pseudonym form under section 552.101 of the Government Code in conjunction with article 57.02(d) of the Code of Criminal Procedure.

We note a portion of the remaining information is subject to section 552.130 of the Government Code.[2] Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country[.]" *See id.* § 552.130(a)(1). Therefore, we find the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, in the event the requestor is not the child victim's legal representative, the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In the event the requestor is the child victim's legal representative, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code and the information we have marked under

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[1]Although you cite to article 57.01 of the Code of Criminal Procedure, we note this article provides the definitions for chapter 57. We understand you to raise article 57.02(d) of the Code of Criminal Procedure.

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

section 552.130 of the Government Code. In this instance, the remaining information must be released.

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,

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 473681

Enc. Submitted documents

c: Requestor
(w/o enclosures)