



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2013

Mr. Matthew B. Cross
Assistant City Attorney
Office of the City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2013-08503

Dear Mr. Cross:

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# 488306 (13-1026-2384/PL# 166927).

The El Paso Police Department (the "department") received a request for the complaint report for a specified incident. 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in pertinent part:

(a) Except as provided by Section 261.203, the 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

...

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

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we find 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) (defining “abuse” for purposes of chapter 261 of Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes). Thus, this information is subject to section 261.201(a).

However, the requestor is a parent of the alleged child victim at issue. Furthermore, the requestor is not the individual alleged to have committed the abuse. Therefore, the department may not withhold the submitted information from the requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, before the department provides any of

this information to the requestor, the department must redact any personally identifying information about a child witness unless the requestor is the child witnesses's parent, managing conservator, or other legal representative. *See id.* § 261.201(l)(1). In this instance, the requestor may be a parent, managing conservator, or other legal representative of the child witness listed in the information at issue. Thus, we rule conditionally. If the requestor is not a parent, managing conservator, or other legal representative of the child witness at issue, then the department must withhold his identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. If the requestor is a parent, managing conservator, or other legal representative of the child witness at issue, then the department may not withhold the identifying information we have marked under section 552.101 in conjunction with section 261.201(l)(1). However, we note the department must redact the identity of the person who made the report before the department provides any of the remaining information to the requestor. *See id.* § 261.201(l)(3). Therefore, the department must withhold the identifying information of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. As no further exceptions to disclosure are raised for the remaining information, the department must release it.¹

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

¹We note the requestor has a special right of access to the information being released in this instance. *See Fam. Code* § 261.201(k), (l)(1). Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 488306

Enc. Submitted documents

c: Requestor
(w/o enclosures)