



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2013

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2013-17455

Dear Mr. Mann:

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# 501527 (Ref. No. GCA13-0499).

The Garland Police Department (the "department") received a request for a specified police report and his daughter's cellular telephone. 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.

Initially, we note the requestor seeks a cellular telephone that was confiscated as part of the department's investigation. The Act applies to "public information," which is defined in section 552.002 of the Government Code. Section 552.002 provides, in pertinent part:

(a) In this chapter, "public information" means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Act of May 27, 2013, 83rd Leg., R.S., S.B. 1368, § 1 (to be codified as an amendment to Gov't Code § 552.002(a)). This office has ruled tangible physical items are not "information," as that term is contemplated under the Act. *See* Open Records Decision No. 581 (1990). Thus, the cellular telephone is not public information for purposes of section 552.002 of the Government Code and the Act does not require the department to make this item available. *See* Gov't Code § 552.021.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 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 Chapter 552, Government Code, 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.

Fam. Code § 261.201(a), (k). You state the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, the submitted information is subject to section 261.201 of the Family Code. In this case, although the requestor is the parent of the child victim named in the submitted information, the requestor is alleged to have committed the suspected abuse. Thus, the requestor does not have a right of access to the submitted information under section 261.201(k). *See id.* § 261.201(k). Accordingly, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family 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 responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/akg

Ref: ID# 501527

Enc. Submitted documents

c: Requestor
(w/o enclosures)