



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2014

Mr. Daniel Ortiz
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2014-01581

Dear Mr. Ortiz:

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# 516380 (El Paso ID# 13-1026-3905, W027956-121713).

The El Paso Police Department (the "department") received a request for case number 13-230246. You claim the requested 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, the following:

(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 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[.]

Fam. Code § 261.201(a), (k)-(l)(1). Upon review, we find the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of ch. 261 of Fam. Code). Thus, we find the submitted information is confidential under section 261.201 of the Family Code.

However, we note the requestor may be a parent, managing conservator, or other legal representative of the child who is listed as a victim and the requestor is not suspected of having committed the alleged abuse. As such, this requestor may have a right of access to the information at issue pursuant to section 261.201(k). *See id.* § 261.201(k). Therefore, we rule conditionally. If the requestor is not the child victim’s parent, managing conservator, or legal representative, then the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Otherwise, the department may not use section 261.201(a) to withhold this

information from the requestor. *See id.* Subsection 261.201(l)(1), however, states the personally identifiable information of a victim or witness who is under the age of eighteen and is not a child of the parent, managing conservator, or other legal representative requesting the information must be withheld from disclosure. *Id.* § 261.201(l)(1). Thus, in conjunction with section 552.101 of the Government Code, the department must withhold the identifying information of the individual listed as involved other two under subsection 261.201(l)(1) of the Family Code. The department must release the remaining information to this requestor pursuant to section 261.201(k) of the Family Code.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.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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/tch

Ref: ID# 516380

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note this requestor has a special right of access under section 261.201(k) of the Family Code to the information being released. Therefore, if the sheriff's office receives another request for this information from a different requestor, the sheriff's office must again seek a ruling from this office.