



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2014

Mr. William Schultz
Assistant District Attorney
Civil Division
Denton County Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2014-10367

Dear Mr. Schultz:

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# 526298.

The Denton County Criminal District Attorney's Office (the "district attorney's office") received a request for all information pertaining to the requestor's foster daughter. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(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:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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:

...

(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 agree 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); *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 the disabilities of minority removed for general purposes). Accordingly, we find this information is subject to chapter 261 of the Family Code. We note, and you acknowledge, the requestor is the foster parent of a child victim listed in the information and is not alleged to have committed the abuse. Section 261.201(k) provides a “parent, managing conservator, or other legal representative” of the child has a right of access to information otherwise confidential under section 261.201(a). *See id.* § 261.201(k). We understand foster children are generally under the conservatorship of the state and parties such as foster parents and foster agencies may have legal responsibilities toward such children. We are unable to determine from the face of the request, however, whether the requestor is a legal representative or managing conservator of the child victim for the purposes of section 261.201(k). Accordingly, we must

rule conditionally. If the requestor is not a legal representative or managing conservator of the listed child victim, then the district attorney's office 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. However, if the requestor is a legal representative or managing conservator of the child victim, then the district attorney's office may not use section 261.201(a) to withhold the information at issue from this requestor. *See id.* However, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, if the requestor is the legal representative or managing conservator of the child victim, we will address your arguments under sections 552.108, 552.130, and 552.147 of the Government Code for the submitted information.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993) (orig. proceeding), held "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. You state the instant request for information encompasses the entire prosecution file of the district attorney's office. Thus, you argue release of the submitted information would reveal the mental impressions or legal reasoning of prosecutors. Based on your representations and our review, we agree section 552.108(a)(4) is applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in

Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177 at 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the district attorney's office may withhold the submitted information under section 552.108(a)(4) of the Government Code.²

In summary, if the requestor is not a legal representative or managing conservator of the listed child victim, then the district attorney's office 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. If the requestor is the legal representative or managing conservator of the child victim, then with the exception of basic information, the district attorney's office may withhold the submitted information under section 552.108(a)(4) of the Government 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/bhf

Ref: ID# 526298

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.