



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 23, 2014

Mr. William Schultz
Assistant District Attorney
County of Denton
1450 East McKinney Street, Suite 3100
Denton, Texas 76209

OR2014-23346

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# 549494.

The Denton County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified prosecution, including a report prepared by the Child Protective Services Division of the Texas Department of Family and Protective Services ("CPS").¹ The district attorney's office states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions 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 section encompasses section 261.201 of the Family Code, which provides in relevant part as follows:

¹The district attorney's office sought and received clarification of the information requested. See Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

(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:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). You assert the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Upon review, we find the submitted information is within the scope of section 261.201(a). However, the requestor’s client is the parent of one of the child victims and a legal representative of the other. The requestor’s client is not alleged to have committed the suspected abuse. Thus, the district attorney’s office may not withhold the submitted information from the requestor on the basis of section 261.201(a). *See id.* § 261.201(k).

Nevertheless, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law must be redacted. *Id.* § 261.201(1)(2). Therefore, we must also address your arguments to withhold the submitted information under section 552.108 of the Government Code.

Section 552.108 of the Government Code states in pertinent part the following:

(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.

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution [is excepted from required public disclosure] if:

...

(3) the internal record or notation:

(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), (b)(3). A governmental body claiming an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706, 710 (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, 460 (Tex. 1993), 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." 873 S.W.2d at 380.

The submitted information consists of a CPS report. The district attorney's office claims the request for information seeks the entire prosecution file of the district attorney's office for the specified case. We disagree. Rather, the requestor has requested specified documents, including the submitted CPS report, in the possession of the district attorney's office. Such a request does not constitute a request for the "entire" file. Thus, we conclude the request is not a request for the district attorney's entire prosecution file. Accordingly, the district attorney's office may not withhold the information at issue under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the holding in *Curry*.

The district attorney's office also claims the submitted information "contains information, internal records, and notations prepared by CPS . . . for a criminal investigation [that] reflects the prosecutor's mental impressions" and, thus, is excepted from disclosure under subsections 552.108(a)(4) and 552.108(b)(3). However, we find the district attorney's office has failed to demonstrate the CPS report consists of mental impressions, opinions, conclusions or legal theories of an attorney or an attorney's representative that were created for trial or in anticipation of litigation. Therefore, we find you have failed to demonstrate the CPS report is protected by subsections 552.108(a)(4) and 552.108(b)(3), and the district attorney's office may not withhold it under section 552.108 of the Government Code.

We note section 552.130 of the Government is applicable to some of the submitted information.² Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130. The district attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

To conclude, the district attorney's office must withhold the information we have marked under section 552.130 of the Government Code. The district attorney's office must release the remaining information.³

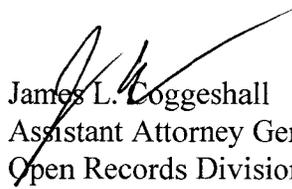
²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See Open Records Decision Nos.* 481 at 2 (1987), 480 at 5 (1987).

³Because the requestor has a special right of access to the information being released, the district attorney's office must again seek a decision from this office if it receives another request for the same information from another requestor.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 549494

Enc. Submitted documents

c: Requestor
(w/o enclosures)