



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 7, 2016

Ms. Linda Samples
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2016-00495

Dear Ms. Samples:

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# 593304 (El Paso ID# 15-1026-6761).

The El Paso Police Department (the "department") received a request for all information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record," unless it is "made confidential under the Act or other law." Gov't Code § 552.022(a)(17). The submitted information includes documents that are subject to section 552.022(a)(17) and must be released unless they are confidential under the Act or other law. Although you assert this information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, these sections are discretionary and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore,

the department may not withhold the information subject to section 552.022 under section 552.103 or section 552.108. Additionally, although you also assert this information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, we note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Therefore, the department may not withhold the information subject to section 552.022 under section 552.101 in conjunction with common-law privacy. However, we will consider the applicability of section 552.101 in conjunction with section 261.201 of the Family Code and section 552.101 in conjunction with constitutional privacy. We will also consider your arguments against disclosure of the information that is not subject to section 552.022.

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, such as section 261.201 of the Family Code, which provides, in relevant part, the following:

(a) 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 chapter 261 of the Family Code 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 chapter 261 of the Family Code or in providing services as a result of an investigation.

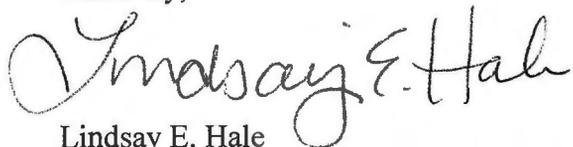
(k) Notwithstanding Subsection (a), an investigating agency, other than the Texas Department of Family and Protective Services or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported 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). The submitted information pertains to an investigation by the department of alleged or suspected child abuse and falls within the scope of section 261.201 of the Family Code. *See 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), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Although the requestor is a parent of the child victim, the requestor is one of the individuals alleged to have committed the alleged or 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 in conjunction with section 261.201.¹

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/bw

Ref: ID# 593304

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

