



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2009

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
Police Legal Advisor
321 John Sartain
Corpus Christi, Texas 78401

OR2009-11862

Dear Ms. Aguilar:

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# 353078.

The Corpus Christi Police Department (the "department") received a request for a specified incident report. You claim the submitted incident report is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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. This exception encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant part:

(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 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.

(b) A court may order the disclosure of information that is confidential under this section if:

(1) a motion has been filed with the court requesting the release of the information;

(2) a notice of hearing has been served on the investigating agency and all other interested parties; and

(3) after hearing and an in camera review of the requested information, the court determines that the disclosure of the requested information is:

(A) essential to the administration of justice; and

(B) not likely to endanger the life or safety of:

(i) a child who is the subject of the report of alleged or suspected abuse or neglect;

(ii) a person who makes a report of alleged or suspected abuse or neglect; or

(iii) any other person who participates in an investigation of reported abuse or neglect or who provides care for the child.

(c) In addition to Subsection (b), a court, on its own motion, may order disclosure of information that is confidential under this section if:

(1) the order is rendered at a hearing for which all parties have been given notice;

(2) the court finds that disclosure of the information is:

(A) essential to the administration of justice; and

(B) not likely to endanger the life or safety of:

(i) a child who is the subject of the report of alleged or suspected abuse or neglect;

(ii) a person who makes a report of alleged or suspected abuse or neglect; or

(iii) any other person who participates in an investigation of reported abuse or neglect or who provides care for the child; and

(3) the order is reduced to writing or made on the record in open court.

Fam. Code § 261.201(a)-(c). You state the submitted incident report was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1)(C) (definition of child abuse includes “physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child”); *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). Based on your representation and our review, we find the incident report is within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude the submitted incident report is generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, that the department received the request for information from Court Appointed Special Advocates of the Coastal Bend, Inc. The requestor included with his request a court order showing the requestor has been appointed the guardian ad litem of the child who is the subject of the submitted incident report. The court order further states that “[u]pon presentation of this order to any . . . law enforcement agency or personnel, the Guardian Ad Litem is hereby authorized to inspect and copy any records relating to the . . . child.” Sections 261.201(b) and (c) provide that information made confidential by section 261.201(a) must be released pursuant to a court order if certain requirements are met. *See* Fam. Code § 261.201(b), (c). In this instance, we are unable to determine whether or not the requestor’s court order complies with the requirements of either section 261.201(b) or section 261.201(c). Thus, if the department determines the court order complies with section 261.201(b) or section 261.201(c), the department may not withhold the submitted incident report under section 261.201(a).¹ Furthermore, because exceptions in the Act cannot impinge on a statutory right of access to information, if the department determines the court order complies with section 261.201(b) or section 261.201(c), the incident report may not be withheld from this requestor under section 552.108 of the Government Code, which you

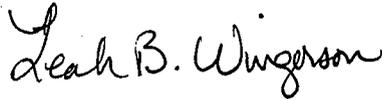
¹We note that, if the department determines the court order complies with either section 261.201(b) or 261.201(c), the information to be released is generally confidential with respect to the general public. Thus, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

also raise as an exception to disclosure for this information. *See* Open Records Decision Nos. 613 at 4 (1993), 451 at 3 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). If, however, the department determines the court order does not comply with section 261.201(b) or section 261.201(c), the department must withhold the submitted incident report under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 353078

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²If the department determines the court order does not comply with section 261.201(b) or section 261.201(c), our ruling is dispositive and we need not address your remaining argument against disclosure.