



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 78711-2548

OR2009-12697

Dear Ms. Byles:

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# 354601 (Fort Worth Request No. 4219-09).

The City of Fort Worth (the "city"), received a request for a specified incident report. You claim the submitted information is excepted from disclosure under sections 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that a person may submit comments stating why information should or should not be released).

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 section 261.201 of the Family Code, which provides as follows:

(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 department 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;

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

(3) the identity of the person who made the report.

Act of May 28, 2007, 80th Leg., R.S., ch. 263, § 12, 2007 Tex. Gen. Laws 421, 428, *amended by* Act of June 1, 2009, 81st Leg., R.S., S.B. 1050, § 1 and Act of June 3, 2009, 81st Leg., R.S., S.B. 1182, § 13 (to be codified as amendments of Fam. Code § 261.201). You contend the submitted report was used or developed in an investigation of alleged or suspected child abuse. *See* Fam. Code §§ 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); 101.003(a) (defining “child” for purposes 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 representations and our review, we find the submitted report is generally confidential under section 261.201 of the Family Code. However, the requestor is the parent of the child who is the subject of the report, and the parent is not alleged to have committed the suspected abuse. In this instance, the city

may not use section 261.201(a) to withhold this report from this requestor. *Id.* § 261.201(k). However, section 261.201(1)(3) requires that before a parent may inspect such records, the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Therefore, with the exception of the identity of the reporting party, which we have marked, the city must release the submitted information to the requestor.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.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, toll free, at (888) 672-6787.

Sincerely,

Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 354601

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note that because the requestor has a special right of access to the submitted information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.