



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2009

Mr. Mack Reinwand
Assistant City Attorney
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR2009-16754

Dear Mr. Reinwand:

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# 362376 (APD Reference Nos. 2009-09-047 and 2009-10-089).

The Arlington Police Department (the "department") received two requests for information related to a specified offense. The first requestor seeks the report related to the specified offense and the second requestor seeks a specified audio recording related to the offense. You claim that the requested information 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. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

- (a) Except as provided by Section 261.203, 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.

...

(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.

Fam. Code § 261.201(a), (k), (l). The submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” 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). We find the submitted information is generally confidential under section 261.201 of the Family Code. You have not indicated that the department has

adopted a rule governing the release of this type of information. Accordingly, we find the submitted information is confidential under section 261.201(a)(1) of the Family Code and the department must withhold it from the first requestor in its entirety under section 552.101 of the Government Code.¹ See Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). However, the second requestor is a parent of the child victim listed in the report, and this parent is not alleged to have committed the suspected abuse or neglect. In this instance, the department may not withhold the requested audio recording from this requestor under section 261.201(a). *Id.* § 261.201(k). However, section 261.201(l)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will address your remaining arguments with regard to the submitted audio recording.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. See *id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the submitted audio recording relates to a closed investigation that did not result in a conviction or deferred adjudication. Based on your representation and our review, we conclude that the department may withhold the submitted audio recording from the second requestor under section 552.108(a)(2) of the Government Code.²

In summary, the department must withhold the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department may withhold the submitted audio recording from the second requestor under section 552.108(a)(2) 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.oag.state.tx.us/open/index_or1.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

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

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

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,

A handwritten signature in black ink, appearing to read "Tamara Wilcox". The signature is fluid and cursive, with the first name being more prominent than the last.

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 362376

Enc. Submitted documents

c: Requestor
(w/o enclosures)