



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2009

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2009-17155

Dear Ms. Cohen:

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# 363113 (ORR # 09-1814).

The Texas Department of Public Safety (the "department") received a request for information related to a specified incident. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You state that a specified portion of the submitted information is not responsive to the request. We agree the information you have marked is not responsive to the request, and this decision does not address the public availability of the non-responsive information which need 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."¹ Gov't

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Code § 552.101. This section encompasses information that is made confidential by statute. Section 261.201(a) of the Family Code provides as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

Fam. Code § 261.201(a). We note that the department is an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). Upon review, we find 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 the 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). Accordingly, we conclude that the submitted information is within the scope of section 261.201 of the Family Code. We note that the department has adopted a rule governing the release of this type of information. *See id.* Section 1.60 of title 37 of the Texas Administrative Code provides for the release of certain information gathered during an investigation under chapter 261 under specific circumstances. *See* 37 T.A.C. § 1.60. However, in this instance, the release provision found in section 1.60 does not apply. Therefore, the submitted information is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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,

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

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,

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

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 363113

Enc. Submitted documents

c: Requestor
(w/o enclosures)