



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2010

Mr. Jon Thatcher
Wolfe, Tidwell & McCoy, L.L.P.
2591 Dallas Parkway, Suite 205
Frisco, Texas 75034

OR2010-01896

Dear Mr. Thatcher:

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# 369675 (Anna File No. C03029PIR20091110-01).

The Anna Police Department (the "department"), which you represent, received a request for all information, including the incident report, on an incident involving a named individual on a specified date.¹ You state that the department will release portions of the requested information to the requestor. You also state the department will redact social security numbers pursuant to section 552.147 of the Government Code.² You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 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) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent

¹You inform us the department requested and received clarification of this request from the requestor. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. See Gov't Code § 552.147(b).

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 . . . 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). We note the submitted information was used in an investigation of alleged child abuse or neglect by the department under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *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). Thus, we find the submitted information is within the scope of section 261.201. However, you acknowledge the requestor is the parent of the child victim, and the parent is not alleged to have committed the alleged abuse or neglect. Thus, we agree the department may not use section 261.201(a) to withhold the submitted information from this requestor. *Id.* § 261.201(k). As you note, section 261.201(1)(3) states the identity of the reporting party must be withheld. However, we find the submitted information does not reveal the identity of the reporting party; thus, none of the information you have marked may be withheld under section 552.101 in conjunction with section 261.201(1)(3). You further note that section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will address your remaining arguments under section 552.101 in conjunction with chapter 411 of the Government Code and section 552.130 of the Government Code.

You assert that some of the remaining information contains confidential criminal history record information (“CHRI”). Section 552.101 also encompasses CHRI generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28 of part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. We note that an individual’s current involvement in the criminal justice system, including active warrant information, does not constitute criminal history record information. *Id.* § 411.081(b). Upon review, we find that the information we have marked consists of CHRI for the purposes of chapter 411. Accordingly, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, no portion of the remaining information consists of CHRI for the purposes of chapter 411. Accordingly, the department may not withhold any of this information under section 552.101 on that basis.

You also raise section 552.130 of the Government Code for a portion of the remaining information. Section 552.130 provides that information relating to a motor vehicle operator’s license or driver’s license issued by a Texas agency is excepted from public release.³ Gov’t Code § 552.130(a)(1). Accordingly, the department must withhold the Texas driver’s license information we have marked under section 552.130 of the Government Code.

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and the Texas driver's license information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.⁴

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 369675

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note that the requestor has a statutory right of access to some of the submitted information, and the department must again seek a decision from this office if it receives another request for the same information from another requestor.