



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2010

Ms. Angela M. DeLuca
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2010-13205

Dear Ms. DeLuca:

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# 392314.

The City of Bryan (the "city") received a request for report number 10-0600599. You claim the submitted 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides in part:

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

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] 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:

...

(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)(2), (l)(3). You represent submitted report number 10-0600599 was developed in an investigation by the city's police department (the "department") of alleged child abuse. *See id.* § 261.001(1) (defining "child abuse" for purposes of chapter 261); *see also id.* § 101.003(a) (defining "child" for purposes of section 261.201 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, this report is subject to section 261.201(a). However, the requestor is a parent of the child victim and is not alleged to have committed the suspected abuse. Accordingly, the city may not withhold the submitted information from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(l)(2) states, however, that any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, because you also raise section 552.108(a)(1) of the Government Code, we will address this argument for the submitted report.

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . .

if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform this office the victim in report number 10-0600599 was provided the documentation needed to file a complaint against the suspect in this report. However, you do not state she has filed this complaint, provide any evidence that the department’s investigation of this case is ongoing, or otherwise explain how release of the submitted report would interfere with law enforcement. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to the submitted information, and no information may be withheld on that basis. However, section 261.201(l)(3) of the Family Code states the identity of the reporting party must be redacted before a report is released pursuant to section 261.201(k). *See* Fam. Code § 261.201(l)(3). We marked the reporting party’s identity that must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. As you raise no other exceptions to disclosure, the remaining portions of the submitted report must be released to this 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

¹The requestor has a special right of access under section 261.201(k) of the Family Code and section 552.023 of the Government Code to the information being released. If the city receives another request for this same information from an individual who does not have a right of access to the information, the city should request another ruling. *See* Gov’t Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

Ref: ID# 392314

Enc. Submitted documents

c: Requestor
(w/o enclosures)