



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2012

Ms. Leticia Mendiola
Crime Records Office
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2012-04022

Dear Ms. Mendiola:

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# 446914.

The McAllen Police Department (the "department") received a request for information pertaining to a specified investigation. You claim 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.

The department asserts the submitted information is confidential under section 552.101 of the Government Code, which 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 made confidential by other statutes, including 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 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:

(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). You assert the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of section 261.201 of Family Code). Upon review, we find the submitted information is within the scope of section 261.201(a). The requestor states she is a co-guardian ad litem for the child victim, and she is not alleged to have committed the suspected abuse. Thus, the department 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(1)(3) provides, however, that the identity of the reporting party must be withheld. *See id.* § 261.201(1)(3). Therefore, the department must withhold the identifying information of the reporting parties, which we have marked, under section 552.101 in conjunction with section 261.201(1)(3). In addition, 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). Thus, we must address the applicability of sections 552.101, 552.108, and 552.137 of the Government Code to this information.¹

Section 552.108(a) provides in relevant part the following:

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication

Gov't Code § 552.108(a)(1)-(2). Section 552.108(a)(1) is mutually exclusive of section 552.108(a)(2). Section 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. *See id.* § 552.108(a)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2).

The submitted information consists of two case reports numbered 2009-031328 and 2009-042394. You assert this information is excepted from disclosure under section 552.108(a)(1) because “[i]n this particular case, the case investigation is still ongoing” and the case “is still pending prosecution[.]” However, you also assert case number 2009-042394 is excepted from disclosure under section 552.108(a)(2) because this case “was ex-cleared.” In addition, in correspondence to the requestor, a copy of which you enclosed in your request for a ruling, you inform the requestor the requested information is excepted from disclosure under section 552.108(a)(2), but not section 552.108(a)(1). Thus, because you have provided conflicting representations, we conclude you have failed to

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See Open Records Decision* Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g., Open Records Decision* No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

demonstrate the applicability of either section 552.108(a)(1) or section 552.108(a)(2) to the submitted information. Therefore, the department may not withhold this information under section 552.108(a)(1) or section 552.108(a)(2).

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides the following:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. A portion of the information at issue contains the results of a polygraph examination. Thus, the department must withhold this information, which we have marked, under section 552.101 in conjunction with section 1703.306(a).

The remaining information contains e-mail addresses of members of the public. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but

is instead the address of the individual as a government employee. The e-mail addresses we have marked do not appear to be of a type specifically excluded by section 552.137(c), and you do not inform us a member of the public has affirmatively consented to their release. Therefore, the department must withhold the marked e-mail addresses under section 552.137.

We note the requestor asserts she has a right of access to the submitted information pursuant to section 107.006 of the Family Code, which provides in relevant part the following:

(a) In conjunction with an appointment under this chapter, other than an appointment of an attorney ad litem for an adult or a parent, the court shall issue an order authorizing the attorney ad litem, guardian ad litem for the child, or amicus attorney to have immediate access to the child and any information relating to the child.

(b) Without requiring a further order or release, the custodian of any relevant records relating to the child, including records regarding social services, law enforcement records, school records, records of a probate or court proceeding, and records of a trust or account for which the child is a beneficiary, shall provide access to a person authorized to access the records under Subsection (a).

Fam. Code § 107.006(a)-(b). The requestor asserts she is a co-guardian ad litem of the child victim at issue in the submitted information and, thus, has a right of access to the information pursuant to section 107.006. However, upon review of the information submitted by the requestor, we find the requestor has not established she seeks the information at issue for purposes of representing the child in the context of a suit affecting the parent-child relationship. *See id.* Accordingly, we find the requestor has not established she has a right of access to the information at issue under section 107.006 of the Family Code.

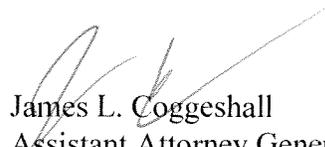
To conclude, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306(a) of the Occupations Code and section 261.201(l)(3) of the Family Code, as well as the information we have marked under section 552.137 of the Government Code. The remaining information must be released to the requestor pursuant to section 261.201(k) of the Family Code.²

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.

²We note the requestor has a special right of access to the information being released in this instance. Accordingly, if the department receives another request for this same information from a different requestor, it must again seek a ruling from this office.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 446914

Enc. Submitted documents

c: Requestor
(w/o enclosures)