



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2012

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

OR2012-05125

Dear Mr. Hager:

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# 451625 (Rowlett File Reference # 53961).

The Rowlett Police Department (the "department"), which you represent, received a request for a specified police report. We note you have redacted social security numbers pursuant to section 552.147(b) of the Government Code and driver's license information pursuant to section 552.130(c) of the Government Code from the submitted information.¹ You claim that the submitted 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. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides:

¹On September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147 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 id.* § 552.147(b).

(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 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). We note the submitted report pertains to an investigation of alleged or suspected child neglect. *See id.* § 261.001(4) (defining “neglect” for purposes of Family 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). As such, the submitted report is within the scope of section 261.201 of the Family Code. We note, however, the requestor is a parent of a child victim named in the submitted report, and the requestor is not accused of committing the alleged abuse. Accordingly, the department may not withhold from this requestor information concerning the alleged abuse that would otherwise be confidential under section 261.201(a). *See 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). Thus, we will consider your argument under section 552.108 of the Government Code for the submitted information.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov’t Code § 552.108(a)(1)-(2), (b)(1)-(2). We note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) are, generally, mutually exclusive. Subsection 552.108(a)(1) generally applies to information that pertains to criminal investigations or prosecutions that are currently pending, while subsection 552.108(a)(2)

protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudications. Additionally, subsection 552.108(b)(2) is applicable to information relating to a criminal investigation or prosecution that has concluded in a final result other than a conviction or deferred adjudication. A governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You cite the statutory language of sections 552.108(a)(2) and (b)(2) of the Government Code and state the submitted report was maintained for information only and did not result in a conviction or deferred adjudication. However, you also state the report may be used in a criminal prosecution for child endangerment. Based on your conflicting representations, we are unable to determine whether the information at issue relates to an ongoing criminal case or a closed case that did not result in conviction or deferred adjudication. Thus, we find you have failed to demonstrate the applicability of section 552.108 to the information at issue; therefore, no information may be withheld on this basis.

As you raise no other exception to disclosure, the submitted information must be released to the requestor under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code. We note, however, subsections 261.201(l)(1) and (3) provide that before a parent may copy or inspect a record of a child under section 261.201(k), the personally identifiable information of a victim or witness under the age of eighteen and the identity of the reporting party must be redacted. Fam. Code § 261.201(l)(1), (3). Thus, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with subsections 261.201(l)(1) and (3) of the Family Code. The department must release the remaining information.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.

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

²We note the requestor has a special right of access to the information the department is releasing. *See* Fam. Code § 261.201(k). Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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 cursive script that reads "Kristi L. Wilkins".

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/eb

Ref: ID# 451625

Enc. Submitted documents

c: Requestor
(w/o enclosures)