



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 31, 2012

Ms. Debra A. Drayovitch
Drayovitch P.C.
620 West Hickory Street
Denton, Texas 76201

OR2012-08330

Dear Ms. Drayovitch:

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# 455207.

The City of Corinth (the "city"), which you represent, received a request for information related to two specified incidents. You state some responsive information has been released. You inform us the city will withhold a driver's license number pursuant to section 552.130(c) of the Government Code.¹ You claim the remaining 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.

Initially, you state the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-02786 (2011). In the prior ruling, this office determined that the Corinth Police Department (1) must withhold any unspecified law enforcement information that depicts any of the named individuals other than the requestor as a suspect, arrested person, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy, unless the requestor has a right of access as an authorized representative of one of the individuals under section 552.023 of the Government Code; (2) must withhold the information we marked in report number 200913359 that identifies the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code; (3) may withhold the remaining information in report number 200913359 under section 552.108(a)(1) of the Government Code, except for the basic information that

¹Section 552.130(c) of the Government Code authorizes a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of requesting a decision from this office. See Gov't Code § 552.130(c); see also *id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide notice to requestor).

must be released under section 552.108(c); (4) may withhold the marked information in report numbers 200908328, 200908340, and 200913661 under section 552.108(a)(2) of the Government Code; (5) must withhold the marked Texas driver's license information under section 552.130 of the Government Code, unless the requestor has a right of access under section 552.023 to one of the individual's driver's license information as his authorized representative; and (6) must release the remaining information in report numbers 200908328, 200908340, and 200913661. We note report number 200913661 is not at issue in the instant request. We further note the current request involves a different requestor who is the parent of the child victim at issue and, thus, may have a right of access to the information in report number 200913359. Finally, while report number 200913359 previously was an open investigation subject to section 552.108(a)(1) of the Government Code, you inform us the investigation is now closed and claim section 552.108(a)(2). Thus, we find the circumstances have changed and the city may not rely on Open Records Letter No. 2011-02786 as a previous determination in this instance. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address your arguments against the disclosure of the information at issue.

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 other statutes make confidential. Section 261.201 of the Family Code provides in 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). Upon review, we find report number 200913359 was used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a)(2). *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); Penal Code § 22.04(c) (defining “child,” for purposes of offense of injury to a child, as a person 14 years of age or younger). We therefore conclude report number 200913359 is generally confidential under section 261.201(a) of the Family Code. In this instance, however, the requestor is a parent of the child who is listed as the victim of the alleged abuse, and the requestor is not accused of committing the alleged abuse. Accordingly, report number 200913359 may not be withheld from this requestor under section 552.101 on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). Section 261.201(l)(3) provides, however, that the identity of the reporting party must be withheld. *See id.* § 261.201(l)(3). Thus, the city must withhold the information we have marked in report number 200913359 that identifies the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Section 261.201(l)(2) also provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 261.201(l)(2). Therefore, we will address your claim under section 552.108 of the Government Code for report number 200913359, along with your claim under section 552.108 for the information you seek to withhold in report numbers 200908328 and 200908340.

Section 552.108 of the Government Code excepts “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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)(2). You state the information in Exhibit D, which pertains to report numbers 200908328, 200908340, and 200913359, is related to closed cases that did not result in a conviction or deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is applicable to the information in Exhibit D. Therefore, the city may withhold the information in Exhibit D under section 552.108(a)(2) of the Government Code.

In summary, the city may withhold the information in Exhibit D under section 552.108(a)(2) of the Government Code. In releasing the remaining information, the city must withhold the information we have marked in Exhibit C that identifies the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 455207

Enc. Submitted documents

c: Requestor
(w/o enclosures)