

December 19, 2012

Mr. Mark Zuniga
Assistant District Attorney
Hays County Government Center
712 S. Stagecoach Trail, Suite 2057
San Marcos, Texas 78666

OR2012-20471

Dear Mr. Zuniga:

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# 474382.

The Hays County Sheriff's Office (the "sheriff's office") received a request for (1) the DVD-R disk of a forensic interview with a named individual; (2) the CD-R disk of the non-custodial interview with the requestor; (3) a specified written statement; and (4) specified photographs pertaining to a specified case. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 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 section 261.201 of the Family Code, which states:

(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.

Fam. Code § 261.201(a), (k). Upon review, we find the submitted information was used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code.¹ *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *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). In this case, although the requestor is the parent of the child named in the report, the requestor is alleged to have committed the abuse. Thus, the requestor does not have a right of access to the submitted information under section 261.201(k). *See id.* § 261.201(k). Accordingly, the sheriff’s office must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) 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

¹We note you also raise section 552.101 of the Government Code in conjunction with section 264.408 of the Family Code. However, we note section 264.408 of the Family Code provides “information related to the investigation of a report of abuse or neglect under [c]hapter 261 and services provided as a result of the investigation is confidential as provided by [s]ection 261.201 [of the Family Code].” *See* Fam. Code § 264.408(b). Accordingly, as the submitted information is subject to section 261.201, we need not address your argument under section 264.408 of the Family Code.

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,

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 474382

Enc. Submitted documents

c: Requestor
(w/o enclosures)