



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2013

Mr. Mark G. Daniel
For the City of Watauga
Evans, Daniel, Moore, Evans & Lazarus
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2013-05702

Dear Mr. Daniel:

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# 484184.

The Watauga Police Department (the "department"), which you represent, received a request for a specified incident report. 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. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

(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 . . . 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)-(3). We note the submitted information was used or developed in an investigation of alleged child abuse. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261 of Family Code), 101.003(a) (defining “child” as person under eighteen years of age who is not and has not been married and who has not had the disabilities of minority removed for general purposes). Accordingly, we find the submitted information is subject to section 261.201. However, we note the requestor is the father of the child victims named in the report, and is not alleged to have committed the abuse. Therefore, the department may not withhold the submitted information from the requestor under section 261.201(a). *See id.* § 261.201(k).

Section 261.201(l)(3) of the Family Code provides that 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 section 261.201(k), the identity of the person who made the report of alleged child abuse or neglect must be redacted. *Id.* § 261.201(l)(3). However, in this case, the reporting party is the requestor. Thus, we find to construe section 261.201(l)(3) to

require a governmental body to withhold the identifying information of a reporting party from a requestor with a section 261.201(k) right of access who is himself the reporting party would lead to an absurd result that the legislature could not have intended. *See Hernandez v. Ebrom*, 289 S.W.3d 316, 318 (Tex. 2009) (unambiguous statutory language is interpreted according to its plain language unless such an interpretation would lead to absurd results); Attorney General Opinion GA-0876 (2011). Therefore, the department may not withhold the identity of the reporting party under section 552.101 on that ground. However, we note section 261.201(1)(2) states that any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See* Fam. Code § 261.201(1)(2). Thus, we will consider your arguments under section 552.108 of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state the submitted information concerns a concluded criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude section 552.108(a)(2) is applicable to the submitted information.

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.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.

¹We note that the requestor has a special right of access to the information being released in this instance. 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.

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,

A handwritten signature in black ink, appearing to read 'VB', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 484184

Enc. Submitted documents

c: Requestor
(w/o enclosures)