



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 11, 2013

Ms. Rita Monterrosa
Litigation Paralegal
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2013-15803

Dear Ms. Monterrosa:

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# 498956.

The Abilene Police Department (the "department") received a request for three specified incident reports. You claim 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.

Initially, you inform us report number 12-022075 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-05134 (2013). In that ruling, we concluded: (1) if the requestor is not the guardian of the child victim listed in report number 12-022075, then the department must withhold the report under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; or (2) if the requestor is the guardian of the child victim, then, with the exception of basic information, the department may withhold report number 12-022075 under section 552.108(a)(2) of the Government Code. As you do not indicate there has been any change in the law, facts, and circumstances on which the previous ruling is based, we conclude the department must withhold or release the information at issue in accordance with Open Records Letter No. 2013-05134. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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).

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:

(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:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we agree the submitted information was used or developed in investigations of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *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). However, we note the requestor may be the legal guardian of the child victim listed in the submitted information. As such, this requestor may have a right of access to the submitted information pursuant to section 261.201(k). As we are unable to determine whether the requestor is the guardian of the child victim, we will rule conditionally. If the requestor is not the guardian of the child victim listed in the submitted information, the department 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.

However, if the requestor is the legal guardian of the child victim, then we note the requestor is suspected of committing the alleged or suspected abuse in report number 12-004433. As such, report number 12-004433 may not be provided to the requestor pursuant to section 261.201(k) of the Family Code. *See* Fam. Code § 261.201(k). Therefore, the department must withhold report number 12-004433 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, the requestor is not alleged to have committed the alleged or suspected abuse in report number 12-020438. Therefore, the department may not withhold report number 12-020438 from the requestor under section 261.201(a). *Id.* However, section 261.201(l)(2) states any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider your argument under section 552.108 of the Government Code for report number 12-020438.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report number 12-020438 relates to a closed investigation that did not result in conviction or deferred adjudication. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing

types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold report number 12-020438 under section 552.108(a)(2) of the Government Code.

In summary, the department must rely on Open Records Letter No. 2013-05134 as a previous determination and withhold or release report number 12-022075 in accordance with that ruling. If the requestor is not the legal guardian of the child victim, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is the legal guardian of the child victim, then the department must withhold report number 12-004433 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, and, with the exception of basic information, which must be released to this requestor, the department may withhold report number 12-020438 under section 552.108(a)(2) of the Government 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 498956

Enc. Submitted documents

c: Requestor
(w/o enclosures)