



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 13, 2014

Ms. M. Ann Montgomery-Moran
Assistant Ellis County and District Attorney
Ellis County and District Attorney's Office
109 South Jackson
Waxahachie, Texas 75165

OR2014-04249

Dear Ms. Montgomery-Moran

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# 518218.

The Ellis County and District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified incident. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 information protected by other statutes, such as section 261.201 of the Family Code, which provides in pertinent 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:

...

(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 find the submitted information was used or developed by the district attorney's office's in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code). Accordingly, we conclude this information is within the scope of section 261.201(a). We note, however, the requestor is a parent of the alleged child victim at issue. Furthermore, the requestor is not the individual alleged to have committed the abuse. Therefore, the district attorney's office may not withhold the submitted information from the requestor under section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(k). However, the district attorney's office must redact any information that is excepted from required disclosure under the Act pursuant to section 261.201(l)(2). *Id.* § 261.201(l)(2). As you raise sections 552.108, 552.130, and 552.147, we will consider the applicability of these sections.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the

detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked relates to a pending criminal investigation. Based upon this representation and our review, we find release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the district attorney’s office may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s license or driver’s license issued by an agency of this state or another state or country. *See Gov’t Code § 552.130(a)(1)*. We note section 552.130 protects personal privacy. Thus, the requestor has a special right of access to his own driver’s license information. *See id.* § 552.023(a) (person or a person’s authorized representative has special right of access, beyond the right of general public, to information held by a governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the district attorney’s office may not withhold the requestor’s own driver’s license information from him under section 552.130. The district attorney’s office, however, must withhold the remaining information you have marked, which pertains to an individual other than the requestor, under section 552.130 of the Government Code.¹

In summary, the district attorney’s office may withhold the information you have marked under section 552.108(a)(1) of the Government Code. With the exception of the requestor’s own driver’s license information, the district attorney’s office must withhold the information you have marked under section 552.130 of the Government Code. The district attorney’s office must release the remaining information.²

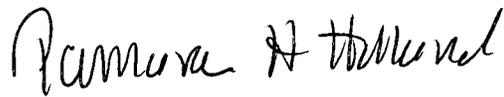
¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov’t Code § 552.130(c)*. If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e)

²We note the requestor has a special right of access to the information being released pursuant to section 261.201(k) of the Family Code. Accordingly, if the district attorney’s office receives another request for this information from a different requestor, then the district attorney’s office should again seek a decision from this office.

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,

A handwritten signature in black ink that reads "Tamara H. Holland". The signature is written in a cursive, flowing style.

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/tch

Ref: ID# 518218

Enc. Submitted documents

c: Requestor
(w/o enclosures)