



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 12, 2015

Mr. Daniel Ortiz
Assistant City Attorney
City of El Paso
Office of the City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

OR2015-04715

Dear Mr. Ortiz:

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# 555870 (Department No. 14-1026-4974).

The El Paso Police Department (the "department") received a request for information pertaining to a specified case. You state the department released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception 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. This exception encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides:

¹We note the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

(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 [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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[.]

Fam. Code § 261.201(a), (k), (l)(1), (2). You state the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to be generally confidential under section 261.201. *See id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 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 instance, however, the requestor is a parent of the victims of the alleged or suspected child abuse and is not accused of committing the abuse. Therefore, pursuant to section 261.201(k) of the Family Code, the submitted information may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(l)(1), however, states the personally identifiable information of a victim or witness who is under the age of eighteen and is not a child of the parent, managing conservator, or other legal representative requesting the information must be withheld from disclosure. *Id.* § 261.201(l)(1). Thus, the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 261.201(l)(1). Further, section 261.201(l)(2) provides that any information excepted from disclosure under the Act or other law must be withheld. *See id.* § 261.201(l)(2). Thus, we will address whether any portion of the submitted information must be withheld under the Act or other law.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release.² Gov’t Code § 552.130(a). Upon review, we find the department must withhold the driver’s license information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. The department must withhold the driver’s license information we have marked under section 552.130 of the Government Code. The department must release the remaining information to this requestor.³

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note the remaining information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without requesting a decision from this office under the Act. Gov’t Code § 552.147(b). We also note the requestor has a special right of access to some of the information being released in this instance. *See id.* § 552.023(a); *see also* Fam. Code § 261.201(k).

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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/cbz

Ref: ID# 555870

Enc. Submitted documents

c: Requestor
(w/o enclosures)