



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2015

Ms. Mary Ann Powell
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2015-17637

Dear Ms. Powell:

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# 582096 (City Ref. Nos. COHM15-020, COHM15-021).

The City of Humble (the "city"), which you represent, received two requests for case number 15-003680. 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.

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 part:

(a) Except as provided by Section 261.203, the 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 City 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 consists of files, reports, records, communications, audiotapes, videotapes, or 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. Thus, this information is confidential under section 261.201(a) of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201).

In this instance, the requestors are the parents of the child victim named in the report, and are not alleged to have committed the abuse or neglect. Therefore, the city may not withhold the submitted information from the requestors under section 261.201(a). *See id.* § 261.201 (k). However, we note section 261.201(l)(2) states that any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(l)(2). Thus, we will consider your remaining arguments under sections 552.101 and 552.108 of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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 concluded in a final result other than a conviction or deferred adjudication.

See id. § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

You state the information at issue relates to a concluded case that did not result in a conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is applicable to the submitted information.

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. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released to these requestors, the city may withhold the information at issue 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.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information. We note the requestors have a special right of access to some of the information being released pursuant to section 261.201(k) of the Family Code. Accordingly, if the city receives another request for this information from a different requestor, then the city should again seek a decision from this office.

Ref: ID# 582096

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)