



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 3, 2016

Ms. Lisa D. Mares
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2016-02642

Dear Ms. Mares:

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# 596775 (Ref. No. 15-17768).

The McKinney Police Department (the "department"), which you represent, received a request for all records pertaining to a specified address during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ 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 relevant 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:

¹We understand the department to raise it based on its markings in the submitted documents.

(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 Juvenile Justice Department, 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.

Fam. Code § 261.201(a), (k). Upon review, we find report numbers 15-005881 and 15-063871 were used or developed in investigations of alleged or suspected child abuse or neglect. *See id.* §§ 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Thus, these reports are subject to section 261.201 of the Family Code. In this case, although the requestor may be a parent of the child victims in the reports at issue, the requestor is listed as a suspect of the alleged abuse or neglect. Accordingly, the requestor does not have a right of access to this information under section 261.201(k). *See id.* § 261.201(k). Therefore, the department must withhold report numbers 15-005881 and 15-063871 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, because the department has not demonstrated the remaining information is subject to section 261.201 of the Family Code, the department may not withhold it under section 552.101 of the Government Code on that basis.

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(a)(1) 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). In this instance, although the department has marked the remaining information as falling under section 552.108, the department has provided no arguments demonstrating release of the information at issue would interfere with the detection, investigation, or prosecution of crime. Consequently, we conclude the department has failed to demonstrate the applicability of section 552.108(a)(1) to the remaining information, and the department may not withhold any portion of the remaining information on that basis.

We note the remaining information contains motor vehicle record information subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.² Gov't Code § 552.130(a). We note section 552.130 protects privacy interests. In this instance, the motor vehicle record information at issue may pertain to a vehicle or vehicles belonging to the requestor. If so, the requestor has a right of access to the this information pursuant to section 552.023 of the Government Code. *See id.* § 552.023 ("person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, to the extent the motor vehicle record information we have marked pertains to vehicles owned by the requestor, the requestor has a right of access to this information pursuant to section 552.023 of the Government Code, and this information may not be withheld from the requestor under section 552.130. However, to the extent the motor vehicle record information we have marked does not pertain to vehicles owned by the requestor, the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold report numbers 15-005881 and 15-063871 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. To the extent the motor vehicle record information we have marked does not pertain to vehicles owned by the requestor, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The department must release the remaining information.³

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note the requestor may have a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a); ORD 481 at 4.

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 596775

Enc. Submitted documents

c: Requestor
(w/o enclosures)