



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 26, 2007

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2007-12511

Dear Mr. Weir:

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# 294076.

The San Antonio Police Department (the "department") received a request for a specified incident report. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that the submitted information is excepted under section 552.101 of the Government Code, which 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. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Act of May 29, 1995, 74th Leg., R.S., ch. 262, 1995 Tex. Gen. Laws 2517, 2552–53, *amended by* Act of May 28, 2007, 80th Leg., R.S., ch. 879, § 1, 2007 Tex. Sess. Law. Serv.1896. Section 58.007 is only applicable to records pertaining to juvenile suspects or offenders. *See id.*; *see also id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes section 58.007). After reviewing the information you assert is excepted under section 58.007, we find that it does not involve an investigation of an allegation that a juvenile engaged in delinquent conduct or conduct indicating a need for supervision for purposes of this section. Therefore, this information is not confidential under section 58.007(c) of the Family Code, and the department may not withhold it under section 552.101 of the Government Code on that ground.

Section 552.101 also encompasses section 261.201 of the Family Code. Section 261.201(a) provides as follows:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Act of April 10, 1995, 74th Leg., R.S., ch. 20, 1995 Tex. Gen. Laws 113, 262, *amended by* Act of May 28, 2007, 80th Leg., R.S., ch. 263, § 12, 2007 Tex. Sess. Law. Serv. 422, 429. You state that the submitted information “involves a report of alleged abuse and neglect of a child.” Upon review of the information at issue, we find that you have not demonstrated that the submitted information pertains to a report of alleged or suspected abuse or neglect made under chapter 261 of the Family Code, or was used or developed in an investigation under chapter 261 of the Family Code. Therefore, the information at issue is not subject to section 261.201, and may not be withheld under section 552.101 on that basis. As you raise

no other exceptions to disclosure, the department must release the submitted information to the requestor.¹

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

¹We note that some of the information being released is confidential and not subject to release to the general public. However, the requestor in this instance is a parent of the minor at issue, and thus has a special right of access to the information. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor, the department should again seek our decision.

complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 294076

Enc. Submitted documents

c: Ms. Joy Garcia
6534 Falls Church
San Antonio, Texas 78247-1030
(w/o enclosures)