



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2008

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2008-13813

Dear Mr. Phillips:

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# 324040.

The City of Fort Worth (the "city") received a request for a specified police report involving the requestor's daughter. You claim that the requested 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.

Initially, you acknowledge that the submitted police report is a law enforcement record of a juvenile that is generally confidential under section 58.007(c) of the Family Code. *See* Fam. Code § 58.007(c). In this instance, however, the requestor is the mother of the child listed as the suspect in the report. As such, the city may not withhold the submitted report from this requestor under section 58.007(c) of the Family Code. *See id.* § 58.007(e) (providing that law enforcement records subject to section 58.007(c) may be inspected or copied by the child's parent). We also note that section 58.007(j) provides that, notwithstanding section 58.007(e), any information that is excepted from required disclosure under Chapter 552, Government Code, or other law may still be withheld from disclosure. *See id.* § 58.007(j)(2). We will therefore address your other argument against disclosure.

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 section encompasses information made confidential by statute, including section 261.201 of the Family Code. Section 261.201(a) provides as follows:

(a) 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 [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, 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.

Fam. Code § 261.201(a). You state, and the documents reflect, that the submitted report was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021); *see also id.* § 101.003(a) (defining “child” for purposes of this section 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). Thus, we find that the submitted information is within the scope of section 261.201 of the Family Code. You have not indicated that the city’s police department has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney

¹We note that the requestor, as mother of the child who is the subject of alleged abuse and neglect, may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services (“DFPS”). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules: shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if DFPS has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure. *See* Fam. Code § 261.201(g).

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 challenge 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 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/jb

Ref: ID# 324040

Enc. Submitted documents