



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2008

Mr. Kenneth W. Findley
Acting Chief of Police
City of Deer Park
P.O. Box 700
Deer Park, Texas 77536-0700

OR2008-17149

Dear Mr. Findley:

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# 330889.

The Deer Park Police Department (the "department") received a request for basic information from four specific incident reports. 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.

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, including section 58.007 of the Family Code, which provides in relevant part:

(c) 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, D, and E.

Fam. Code § 58.007(c). Section 58.007(c) applies to records of a child who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision, when such conduct occurred on or after September 1, 1997. *See id.* § 51.02(2) (defining “child” as a person ten years of age or older and under seventeen years of age); *id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Section 58.007(c) is not applicable to information that relates to a juvenile only as a complainant, victim, witness, or other involved party and which does not identify a juvenile as a suspect, offender, or defendant.

Upon review, we find that reports 2006-494, 2006-12325, and 2006-12695 are each a law enforcement record involving a juvenile suspect accused of delinquent conduct that occurred after September 1, 1997. Accordingly, these three reports are confidential pursuant to section 58.007 of the Family Code and must be withheld in their entirety pursuant to section 552.101 of the Government Code.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in relevant part:

(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 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.

Fam. Code § 261.201(a). Upon review, we find that report 2006-4421 involves allegations of sexual assault of a child and was created pursuant to an abuse or neglect investigation as defined in section 261.001. *See id.* § 261.001(1), (4) (defining “child abuse” and “neglect” for purposes of section 261.201); *id.* § 101.003(a) (defining “child” as a person under 18

years of age). Therefore, this report falls within the scope of section 261.201. You have indicated that the department has not adopted a rule governing the release of this type of information. Therefore, we conclude that report 2006-4421 is confidential under section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

In summary, the department must withhold reports 2006-494, 2006-12325, and 2006-12695 in their entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code and must withhold report 2006-4421 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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 general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

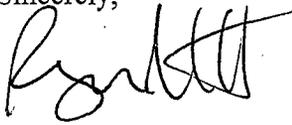
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read "Ryan T. Mitchell". The signature is fluid and cursive, with the first name being the most prominent.

Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/jb

Ref: ID# 330889

Enc. Submitted documents

cc: Requestor
(w/o enclosures)