



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2009

Ms. Shelly Doty
City Secretary
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033

OR2009-07861

Dear Ms. Doty:

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# 345489.

The Cleburne Police Department (the "department") received a request for information pertaining to two specified cases. You claim 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.

Section 552.101 of the Government Code excepts from public 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 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 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.

Fam. Code § 261.201(a). The submitted reports consist of information used or developed in investigations under chapter 261; therefore, the submitted information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *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, the submitted reports are generally confidential under section 261.201 of the Family Code. We note, however, the requestor is an investigator with the Special Prosecution Unit (the “unit”) of the Texas Department of Criminal Justice. Section 261.201(a) also provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). In this instance, section 58.007 of the Family Code, and its predecessor statute, section 51.14 of the Family Code, may constitute “applicable state law” for purposes of section 261.201(a).

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. For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The relevant language of section 58.007 reads as follows:

(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 Subchapters B, D, and E.

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

Id. § 58.007(c), (e). We find that complaint report number 980760-OR involves juvenile delinquent conduct that occurred after September 1, 1997. Thus, that report is subject to section 58.007. However, as stated above, the requestor is an investigator with the unit. Section 58.007(e) gives a "criminal justice agency as . . . defined by Section 411.082, Government Code," a right of access to juvenile law enforcement records. Section 411.082 defines a "criminal justice agency" as including "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice." Gov't Code § 411.082(3)(A). Upon review, we determine that the unit is a criminal justice agency as defined by section 411.082. Thus, the unit has a right of access to complaint report number 980760-OR under section 58.007(e), which constitutes "applicable state law" for purposes of section 261.201(a).

Although you assert that complaint report number 953911-OR is also subject to section 58.007, we note that section 58.007 is inapplicable because the conduct at issue occurred in 1995. Former section 51.14 of the Family Code is the applicable provision in this instance. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided as follows:

Except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [pertaining to juvenile conduct] are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590. Despite the repeal of section 51.14(d), law enforcement records pertaining to juvenile conduct that occurred prior to January 1, 1996, continue to be confidential under

that section.¹ Because complaint report number 953911-OR pertains to juvenile delinquent conduct that occurred prior to January 1, 1996, we conclude that the release of complaint report number 953911-OR is governed by former section 51.14(d) of the Family Code.

Section 51.14(d)(3) specifically authorizes the release of juvenile records to "law-enforcement officers when necessary for the discharge of their official duties." Accordingly, if the department determines that the requestor, who is an investigator with the unit, is in fact a "law-enforcement officer" who is seeking the information because it is "necessary for the discharge of [her] official duty," then the requestor has a right of access to complaint report number 953911-OR under section 51.14(d)(3), which constitutes "applicable state law" for purposes of section 261.201(a). Otherwise, the requestor has no right of access to complaint report number 953911-OR under section 51.14.

We next note that in addition to a right of access under "applicable state law," section 261.201(a) also requires that release be "for purposes consistent with the [Family Code]." Therefore, if the unit intends to use complaint report number 980760-OR for purposes consistent with the Family Code, as required by section 261.201(a), then the department must release complaint report number 980760-OR to the unit. Likewise, if the department determines that the requestor has a right of access to complaint report number 953911-OR under section 51.14(d)(3) and intends to use the report for purposes consistent with the Family Code, then the department must also release complaint report number 953911-OR to the unit. However, if the department determines the requestor does not have a right of access to complaint report number 953911-OR under section 51.14(d)(3), then the department must withhold report number 953911-OR pursuant to section 552.101 Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute); Fam. Code § 261.201(b)-(g) (listing entities authorized to receive 261.201 information). Furthermore, even if the requestor has a right of access to both reports, but the department determines that the requestor does not intend to use either report for purposes consistent with the Family Code, then the submitted reports must be withheld in their entirety pursuant to 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 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.oag.state.tx.us/open/index_or1.php.

¹See Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon).

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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy Shipp".

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 345489

Enc. Submitted documents

cc: Requestor
(w/o enclosures)