



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2009

Mr. Paul F. Wienskie
Attorney for City of Euless Police Department
204 South Mesquite
Arlington, Texas 76010

OR2009-17619

Dear Mr. Wienskie:

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# 364828.

The Euless Police Department (the "department"), which you represent, received a request for specified police reports 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.

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 that other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. Fam. Code § 51.02(2). Section 58.007 provides in pertinent part 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 Subchapter 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.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). You inform us that Exhibit B-1 involves juvenile delinquent conduct occurring after September 1, 1997. Upon review, we agree that Exhibit B-1 is subject to section 58.007(c). However, we note that the requestor is the mother of the juvenile suspect listed in the report. Parents and guardians of juvenile offenders have a special right of access to information concerning their children pursuant to section 58.007(e) of the Family Code. Therefore, information pertaining to the requestor's child may not be withheld under section 552.101 in conjunction with section 58.007(c) of the Family Code. *Id.* § 58.007(e). However, any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). Therefore, the department must withhold the identifying information of the juvenile victim and witnesses, which we have marked, under section 58.007(j)(1) of the Family Code. Section 58.007(j)

also states a governmental body must redact any information that is excepted from disclosure under the Act. *See id.* § 58.007(j)(2). We note that Exhibit B-1 contains information subject to section 552.130 of the Government Code.¹ Accordingly, we will address the applicability of this section to the submitted information.

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

(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:

- (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 department or the Texas Youth Commission, 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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Id. § 261.201(a), (k), (l). In this instance, the Exhibit B-2 relates to an investigation of an alleged sexual assault of a child. *See id.* § 261.001(1)(E) (definition of "abuse" includes sexual assault under Penal Code section 22.011). Therefore, we find that Exhibit B-2 is generally confidential under section 261.201 of the Family Code.

We note, however, that the requestor is the parent of the child victim listed in Exhibit B-2, and is not alleged to have committed the suspected abuse or neglect. In this instance, the department may not use section 261.201(a) to withhold this information from this requestor. *Id.* § 261.201(k). Section 261.201(l)(1), however, states that the personally identifiable information of any child witness who is not the requestor's child must be withheld. *Id.* § 261.201(l)(1). Additionally, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Further, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). We note that Exhibit B-2 also contains information subject to section 552.130 of the Government Code. Accordingly, we will address the applicability of this section to the submitted information.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The department must withhold the information we have marked in Exhibits B-1 and B-2 under section 552.130.

In summary, the department must withhold the identifying information of juveniles other than the requestor's child, which we have marked, in Exhibit B-1 under section 552.101 in conjunction with section 58.007(j)(1) of the Family Code and in Exhibit B-2 under section 552.101 in conjunction with section 261.201(l)(1) of the Family Code. The department must withhold the reporting party's identity in Exhibit B-2, which we have marked, under section 552.101 in conjunction with section 261.201(l)(3) of the Family Code. Lastly, the department must withhold the information we have marked in Exhibits B-1 and

B-2 under section 552.130 of the Government Code. The remaining information must be released to the requestor.²

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_orl.php, 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, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/ri

Ref: ID# 364828

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the remaining information being released contains confidential information regarding the child to which the requestor has a right of access as the child's parent. *See* Fam. Code § 58.007(e); *see also* Fam. Code § 261.201(k). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office. We also note the remaining information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.