



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 16, 2009

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

OR2009-17810

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# 364432 (COSA File No. 2009-4430).

The City of San Antonio (the "city") received a request for all information pertaining to a specified incident. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information, which we have marked, appears to have been obtained pursuant to grand jury subpoenas. The Act generally requires the disclosure of information maintained by a "governmental body," but the judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and therefore are not subject to the Act. *See* Open Records Decision Nos. 513 (1988), 411 (1984), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exception. *See* ORD 513. Thus, to the extent the information we have marked is in the custody of the city as an agent for the

grand jury, this information is in the grand jury's constructive possession and is not subject to the Act. This decision does not address the public availability of such information. However, to the extent the marked information is not in the custody of the city as an agent for the grand jury, we will address your arguments to withhold the marked information, as well as the remaining information.

You claim the submitted information is confidential under section 58.007 of the Family Code. Upon review, we agree the submitted incident information consists of law enforcement records of a juvenile that is generally confidential under section 58.007(c). *See* Fam. Code § 58.007(c). In this instance, however, the requestor is the attorney of the juvenile suspect noted 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 law enforcement records subject to section 58.007(c) may be inspected or copied by the child). We also note section 58.007(j) provides that, notwithstanding section 58.007(e), any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 58.007(j)(2). We will, therefore, consider your remaining arguments 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 protected by other statutes, such as section 261.201(a) of the Family Code, which provides:

(a) The following information is confidential, is not subject to [required] public release . . . , 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.

Fam. Code § 261.201(a). You state the submitted information was used or developed in an investigation of suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Family 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). Based on your representation and our review, we find 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,

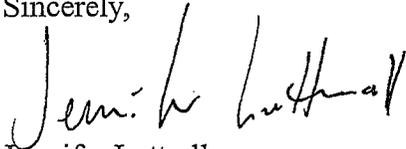
the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. See Open Records Decision No. 440 at 2 (1986) (predecessor statute).<sup>1</sup>

In summary, to the extent the information we have marked is in the custody of the city as an agent for the grand jury, this information is in the grand jury's constructive possession and is not subject to the Act. The city must withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent the marked information is not in the custody of the city as an agent for the grand jury, the city must withhold it and the remaining information 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 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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 364432

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.