



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2010

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2010-03200

Dear Ms. Sandoval-Walker:

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# 373286.

The El Paso Police Department (the "department") received a request from an investigator with the Child Protective Services (the "CPS") division of the Texas Department of Family and Protective Services (the "DFPS") for eight specified 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 section 261.201 of the Family Code, which provides 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.

Fam. Code § 261.201(a). Upon review of the submitted information, we conclude that report number 09-072097 constitutes a report of alleged or suspected abuse or neglect made under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “child abuse” as including offense of indecency with a child under Penal Code § 21.11); *see also* Penal Code § 21.11 (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age). Therefore, this report falls within the scope of section 261.201(a)(1). However, as the requestor in this instance is a CPS investigator, the confidentiality of section 261.201 does not apply. *See id.* § 261.105(a) (local or state law enforcement agency must refer chapter 261 reports to the DFPS). The department must, therefore, release report number 09-072097 to the requestor.¹

Section 552.101 also encompasses section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Fam. Code § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). The relevant part of section 58.007(c) 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 Subchapter B, D, and E.

¹Because the requestor has a right of access to information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

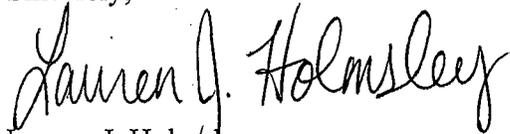
Fam. Code § 58.007(c). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review, we find that report numbers 08-198171, 08-301095, 09-006176, 09-133295, 09-134236, and 09-185141, which we have marked, consist of law enforcement records of a juvenile engaged in delinquent conduct after September 1, 1997. Thus, section 58.007(c) of the Family Code is applicable to the information we have marked. Although the requestor is a representative from DFPS, she does not indicate that she has a right of access to this information under state or federal law. *See* Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). Accordingly, the department must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, the remaining report, report number 09-050093, is not a law enforcement record of a juvenile engaged in delinquent conduct after September 1, 1997. Thus, section 58.007(c) of the Family Code is not applicable to that report. As you raise no further exceptions to disclosure of report number 09-050093, we find that report must be released.

In summary, the department must withhold report numbers 08-198171, 08-301095, 09-006176, 09-133295, 09-134236, and 09-185141 pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The remaining information must be released to this requestor.

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,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

Ref: ID# 373286

Enc. Submitted documents

c: Requestor
(w/o enclosures)