



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2010

Deputy D. Huffman
Parker County Sheriff's Office
129 Hogle Street
Weatherford, Texas 76086

OR2010-04700

Dear Deputy Huffman:

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# 374758.

The Parker County Sheriff's Office (the "sheriff") received a request for information pertaining to a specified case number. You state the sheriff has released some of the requested information to the requestor. You claim that the submitted 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.

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, such as section 261.201 of the Family Code, which provides in pertinent part:

(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 [Texas Department of Family and Protective Services] 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

(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.

Fam. Code § 261.201(a), (k), (l). Upon review, we find the submitted information was used or developed in an investigation by the sheriff of alleged or suspected child abuse under chapter 261. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011); *see also* Penal Code § 22.011(c)(1) (defining “child” for

purposes of Penal Code section 22.011). Accordingly, we find that the submitted information is within the scope of section 261.201 of the Family Code. You do not indicate that the sheriff has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given that assumption, we conclude the submitted information is generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In this instance, however, the requestor may be the mother of the child victim listed in the information at issue. Further, the requestor is not the individual alleged to have committed the suspected abuse. *See* Fam. Code § 261.201(k). As it is not clear whether the requestor is the child's parent for purposes of section 261.201(k), we must rule conditionally. If the requestor is not a parent of the child victim listed in the report, the submitted information is confidential in its entirety under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.¹ *See* ORD 440 at 2.

If the requestor is a parent of the child victim, the sheriff may not use section 261.201(a) to withhold the submitted information from this requestor. *See* Fam. Code § 261.201(k). Section 261.201(l)(2), however, states that 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). Thus, because you also assert section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code and section 552.108 of the Government Code, we will address your arguments under those exceptions.

Section 552.101 also encompasses section 58.007 of the Family Code, which 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

¹As our ruling under this scenario is dispositive for the submitted information, we need not address your remaining arguments against the disclosure of the submitted information.

(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.

Id. § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct indicating a need for supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 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). Upon review, we find that the submitted information involves allegations of a juvenile engaged in delinquent conduct occurring after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 of the Family Code apply to this information. Thus, the submitted information is subject to section 58.007(c), and must be withheld in its entirety under section 552.101 of the Government Code.²

In summary, if the requestor is not a parent of the child victim listed in the submitted report, then the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the parent of the child victim, then the sheriff may not use section 261.201(a) of the Family Code to withhold the submitted information; the sheriff must nevertheless withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. We note that because section 261.201(a) of the Family Code protects all “files, reports, communications, and working papers” related to an investigation of child abuse and section 58.007 of the Family Code protects all law enforcement records relating to juvenile conduct, the sheriff must not release front page offense report information when information is being withheld in its entirety under section 552.101 of the Government Code in conjunction with either section 58.007 of the Family Code or 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, 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

²As our ruling is dispositive, we need not address your remaining argument against the disclosure of the submitted information.

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,

A handwritten signature in cursive script, appearing to read "Laura Ream Lemus".

Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 374758

Enc. Submitted documents

c: Requestor
(w/o enclosures)