



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2010

Mr. Jason Day
City Attorney
City of Royce City
P.O. Box 638
Royce City, Texas 75189

OR2010-11248

Dear Mr. Day:

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# 388223 (RCCA10-0114).

The City of Royce City (the "city") received a request for a specified police report. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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 in relevant part the following:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent

¹We note that although you raise section 552.108 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information.

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). We note the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining

“abuse” for purposes of chapter 261 of the Family Code); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as a person younger than 17 years of age). Therefore, the submitted information is generally confidential under section 261.201 of the Family Code. However, we note the requestor is a parent of the child victims and is not alleged to have committed the suspected abuse. Accordingly, the city may not withhold the submitted information from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). 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). We note the submitted information may be subject to section 552.101 of the Government Code in conjunction with 58.007 of the Family Code. Thus, we will address this section.

Section 552.101 also encompasses 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 of the Family Code. The relevant language of section 58.007 provides:

(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.

(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). 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 at the time of the reported conduct. *See id.* § 51.02(2)(A). Upon review, we note the submitted information may pertain to a juvenile suspect. However, the submitted information does not reflect the age of the suspect. Because we are unable to determine the age of the suspect involved in the submitted report, we must rule conditionally. To the extent the submitted information constitutes a record of a juvenile suspect or offender who is ten years of age or older and under seventeen years of age, section 58.007(c) of the Family Code is applicable to the submitted information. However, to the extent this information pertains to a suspect or offender who is not ten years of age or older and under seventeen years of age, section 58.007(c) is not applicable to the submitted information.

If section 58.007(c) is applicable to the submitted information, we note the requestor is the step-parent of the suspect listed in the report. As noted above, section 58.007(e) states a juvenile's parent or guardian may inspect law enforcement records concerning the juvenile. *See id.* § 58.007(e). Therefore, to the extent the submitted information pertains to a suspect or offender who is ten years of age or older and under seventeen years of age, if the requestor is not a legal guardian of the juvenile suspect or offender, the submitted information is confidential pursuant to section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. However, to the extent the requestor is a legal guardian of the juvenile suspect or offender, the city may not withhold the submitted information from this requestor on the basis of section 58.007(c). *Id.* Section 58.007(j) provides, however, that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2).

As previously noted, section 261.201(1)(3) of the Family Code provides that the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Thus, the city must withhold the identifying information of the reporting party, which we have marked, under section 552.101 in conjunction with section 261.201(1)(3).

In summary, to the extent the submitted information constitutes a record of a suspect or offender engaged in delinquent conduct who is ten years of age or older and under seventeen years of age and the requestor is not a legal guardian of the juvenile suspect or offender, the

submitted information is confidential pursuant to section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. Otherwise, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code, and the remaining information must be released.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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 388223

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information being released in this instance contains confidential information regarding the alleged child victims to which the requestor has a right of access. *See* Fam. Code § 261.201(k). If the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.