



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2010

Mr. Art Pertile, III
Olson & Olson, L.L.P.
For City of Stafford
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2010-14862

Dear Mr. Pertile:

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# 395179 (City # COS10-011).

The City of Stafford (the "city"), which you represent, received a request for thirteen specified police offense reports. You state the city has provided some of the requested information to the requestor, with social security numbers withheld under section 552.147 of the Government Code and unspecified driver's license information withheld under section 552.130 of the Government Code.¹ You claim the submitted offense reports are excepted from disclosure under sections 552.101 and 552.130 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. This section encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides:

¹We note 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. Furthermore, this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

(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). Offense report numbers 024227PD, 052374PD, and 060468PD reflect they were used or developed in investigations by the city's police department (the "department") of alleged child abuse and neglect. *See id.* §§ 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021), .001(4) (defining "neglect" for purposes of Fam. Code ch. 261); *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); *see also* Fam. Code § 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). Thus, we find the reports are within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, the city must withhold report numbers 024227PD, 052374PD, and 060468PD under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. 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:

²As our ruling is dispositive, we need not address your remaining argument against disclosure of a portion of this information.

(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.

Fam. Code § 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 at the time of the reported conduct. *See id.* § 51.02(2). You claim report numbers 023435PD, 050355PD, 052717PD, 052719PD, 053169PD, 060463PD, and 070381PD are confidential under section 58.007(c). Report numbers 023435PD, 050355PD, 052717PD, 052719PD, 060463PD, and 060463PD's related arrest report involve thirteen-, fourteen-, fifteen-, and sixteen-year-old individuals suspected of, cited for, or arrested for selling prescription medication, drug and tobacco possession, disorderly conduct, assault, evading arrest, and assault on a public servant. Thus, we find these reports involve juvenile delinquent conduct. *See id.* § 51.03(a) (defining juvenile "delinquent conduct" for the purposes of section 58.007). Report number 053169PD involves a fifteen-year-old individual suspected of failure to attend school. Thus, we find this report involves juvenile conduct indicating a need for supervision. *See id.* § 51.03(b)(2) (defining juvenile "conduct indicating a need for supervision" to include "the absence of a child on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school"). It does not appear any of the exceptions in section 58.007 of the Family Code apply. Therefore, we find report numbers 023435PD, 050355PD, 052717PD, 052719PD, 053169PD, 060463PD, and 060463PD's related arrest report are confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.

We note, however, the suspect listed in report number 070381PD was seventeen years old at the time of the alleged offense. Thus, we find this report does not involve a child, for purposes of section 58.007, as a suspect or offender. Therefore, we conclude report number 070381PD may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal

regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked information in report number 033266PD that constitutes CHRI that is confidential under chapter 411. Accordingly, the marked information must be withheld under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

You claim some of the remaining information is excepted under section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or driver's license, title, registration, or personal identification document issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2), (3). We have marked Texas driver's license numbers, types, and expiration dates; Texas license plate numbers and expiration dates; and vehicle identification numbers in the remaining information. The department must withhold this marked information under section 552.130 of the Government Code.³

In summary, the city must withhold report numbers 024227PD, 052374PD, and 060468PD under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; report numbers 023435PD, 050355PD, 052717PD, 052719PD, 053169PD, 060463PD, and 060463PD's related arrest report under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; the marked CHRI in report number 033266PD under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code; and the marked Texas motor vehicle record information under section 552.130 of the Government Code. The remaining information must be released.⁴

³We note Open Records Decision No. 684 also authorizes all governmental bodies to withhold Texas license plate numbers under section 552.130 of the Government Code without the necessity of requesting an attorney general decision.

⁴We note the information to be released contains social security numbers, which, as previously noted, the city is authorized to redact pursuant to section 552.147(b) of the Government 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 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 395179

Enc. Submitted documents

c: Requestor
(w/o enclosures)