



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2010

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

OR2010-16117

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# 397942 (COSA File Nos. 2010-6388 & 2010-6684).

The City of San Antonio (the "city") received two requests for information pertaining to a specified case number. You claim 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 section 261.201 of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the 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:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(1)(2). You state the submitted information pertains to an investigation of alleged child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *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). Thus, we find the submitted information falls within the scope of section 261.201 of the Family Code. However, we note the first requestor is the mother of the child victim listed in the submitted information, and she is not alleged to have committed the alleged child abuse or neglect. Accordingly, the city may not withhold the submitted information from the first requestor under section 261.201(a). *Id.* § 261.201(k). The second requestor, however, is not one of the individuals who is authorized to receive access to the submitted information. Therefore, the city must withhold the submitted information from this requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We note section 261.201(1)(2) states before a parent may inspect records any information that is excepted from required disclosure under the Act or other law may still be

withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider whether the submitted information may otherwise be withheld from the first requestor.

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(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. *Id.* § 51.02(2). Section 58.007 provides in relevant part:

(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.

Id. § 58.007(c). Upon review, we find the submitted information involves alleged juvenile delinquent conduct that occurred after September 1, 1997. *Id.* § 51.03(a) (defining "delinquent conduct"). It does not appear any of the exceptions in section 58.007 apply. Therefore, this information is confidential pursuant to section 58.007(c) of the Family Code. Accordingly, the city must withhold the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

In summary, the submitted information must be withheld from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The submitted information must be withheld from the first requestor under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,

A handwritten signature in cursive script that reads "C. Alvarado".

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tp

Ref: ID# 397942

Enc. Submitted documents

c: Requestors
(w/o enclosures)