



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 6, 2010

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2010-18249

Dear Mr. Alicie:

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# 401957.

The Baytown Police Department (the "department") received a request for specified cases involving two named individuals from 2006 and 2009. You claim the submitted information is the subject of a previous determination by this office. We have considered your arguments and reviewed the submitted information.

Initially, we note you have only submitted information pertaining to a case from 2009. To the extent any information responsive to the request for information pertaining to a case from 2006 existed and was maintained by the department on the date the department received the request, we assume you have released it. If you have not released this information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, you state the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-02978 (2010). In that ruling, we concluded the department must withhold the information at issue in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. We note the requestor in the present request is the parent of the child victims listed in the submitted report and is not alleged to have committed

the abuse at issue in the report. Accordingly, pursuant to section 261.201(k) of the Family Code, the department may not withhold the submitted information from this requestor under section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(k) (investigating agency shall provide to the parent of a child who is the subject of reported abuse information concerning the reported abuse unless the parent requesting the information is alleged to have committed the abuse). Thus, we find that the circumstances have changed with regard to the information at issue, and the department may not continue to rely on Open Records Letter No. 2010-02978 as a previous determination in this instance. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We note the submitted information is subject to section 552.101 of the Government Code.¹ Accordingly, we will address the applicability of this section to 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 of the Government Code encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides in relevant 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
- (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.

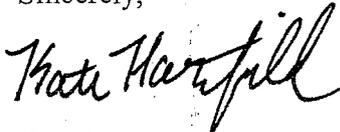
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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). The submitted information relates to alleged delinquent conduct that occurred after September 1, 1997. As such, this information constitutes law enforcement records that are confidential pursuant to section 58.007(c). It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Accordingly, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) 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 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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 401957

Enc. Submitted documents

c: Requestor
(w/o enclosures)