



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2010

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2010-19487

Dear Ms. Cohen:

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# 404877 (DPS OR #10-2345).

The Texas Department of Public Safety (the "department") received a request for all records pertaining to the Gainesville State School since the year 1980. You state you have released some of the requested information. You claim that the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you acknowledge and we agree that the department did not comply with its fifteen business-day deadline under section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

information to overcome this presumption. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because the department's claims under section 552.101 of the Government Code can provide compelling reasons for non-disclosure under section 552.302, we will address your arguments under that exception.

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 of the Family Code, which provides:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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). You state some of the information at issue "relate[s] to investigations into alleged assaults of children" and are records consisting of "files, reports, records, communications, or working papers used or developed in an investigation under chapter 261[.]" We understand each of the victims listed in the information at issue is a "child" for the purposes of section 261.201 of the Family Code. *See 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, this information is within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). You state the department has not adopted a rule that governs the release of this type of information. You also state the requestor has not stated he is an individual who would have a right of access to any of the information at issue under chapter 261. *See id.* § 261.201(k). Based on your representations and upon our review, we determine the information at issue is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold reports RB-2007-00103, RB-2007-00104, RB-2007-00105, RB-2007-00106, RB-2007-00107, RB-2007-00108, RB-2007-00109, RB-2007-00110,

RB-2007-00111, RB-2007-00147, RB-2007-00153, RB-2007-00192, RB-2007-00194, RB-2007-00209, RB-2007-00211, RB-2007-00212, RB-2007-00213, RB-2007-00215, RB-2007-00217, RB-2007-00236, RB-2007-00237, RB-2007-00238, RB-2007-00240, RB-2007-00243, RB-2007-00270, RB-2007-00293, RB-2007-00332, RB-2007-00333, RB-2007-00351, RB-2007-00352, RB-2007-00353, RB-2007-00360, RB-2007-00361, and RB-2007-00375 in their entirety from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code 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

(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). 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. You state case report RB-2007-00269 involves allegations of a child engaged in conduct “in violation of penal statutes” that occurred after September 1, 1997. *See id.* § 51.03(a), (b) (defining “delinquent conduct” as including “conduct . . . that violates a penal law of this state or the United States punishable by imprisonment or confinement by jail”). We understand the suspect involved in report RB-2007-00269 to be a child for the purposes of section 58.007(c). *See id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and under seventeen years of age). As such, we determine this information constitutes a juvenile law enforcement record that is confidential pursuant to section 58.007(c). As you state, it does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Accordingly, the department must withhold report RB-2007-00269 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

In summary, the department must withhold reports RB-2007-00103, RB-2007-00104, RB-2007-00105, RB-2007-00106, RB-2007-00107, RB-2007-00108, RB-2007-00109, RB-2007-00110, RB-2007-00111, RB-2007-00147, RB-2007-00153, RB-2007-00192, RB-2007-00194, RB-2007-00209, RB-2007-00211, RB-2007-00212, RB-2007-00213, RB-2007-00215, RB-2007-00217, RB-2007-00236, RB-2007-00237, RB-2007-00238, RB2007-00240, RB-2007-00243, RB-2007-00270, RB-2007-00293, RB-2007-00332, RB-2007-00333, RB-2007-00351, RB-2007-00352, RB-2007-00353, RB-2007-00360, RB-2007-00361, and RB-2007-00375 in their entirety from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold report RB-2007-00269 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/vb

Ref: ID# 404877

Enc. Submitted documents

c: Requestor
(w/o enclosures)