



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2011

Mr. Paul F. Wieneskie
Attorney at Law
204 South Mesquite
Arlington, Texas 76010

OR2011-00185

Dear Mr. Wieneskie:

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# 404893.

The Euless Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. 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 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). The submitted reports were used or developed in investigations of alleged or suspected child abuse and are subject to section 261.201. *See id.* § 261.001(1)(E) (definition of abuse includes indecency with a child under Penal Code section 21.11); *see also* Penal Code § 21.11(a) (defining “child” for purposes of Penal Code section 21.11 as a person under 17 years of age). Therefore, report number 1000065526 is confidential under section 261.201 of the Family Code and must be withheld in its entirety in conjunction with section 552.101.¹ However, the requestor is the parent of the child victims listed in the remaining reports, and the parent is not alleged to have committed the

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

suspected abuse. In this instance, the department may not use section 261.201(a) to withhold these reports from this requestor. *Id.* § 261.201(k). We note, however, that section 261.201(l) provides that before a parent can copy and inspect a record of a child under 261.201(k), the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(3). Further, 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). You raise section 552.101 in conjunction with section 58.007 of the Family Code. Accordingly, we will consider the applicability of that section to the remaining reports.

Section 552.101 also encompasses section 58.007 of the Family Code, which provides in pertinent 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). 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). Section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. Upon review, we find the remaining reports do not involve a juvenile as a suspect, offender, or defendant. Therefore, you have failed to demonstrate that the remaining reports are juvenile law enforcement records for purposes of section 58.007(c). Accordingly, the remaining reports may not be withheld under section 552.101 on that basis.

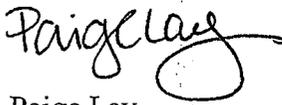
As previously noted, section 261.201(l)(3) of the Family Code provides that the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Thus, the department must withhold the identifying information of the reporting party in the remaining reports, which we have marked, under section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

In summary, the department must withhold report number 1000065526 under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. The department must withhold the information we marked in the remaining reports under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The department must release the remaining information to the requestor.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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/vb

Ref: ID# 404893

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²The requestor has a special right of access under section 261.201(k) of the Family Code to the information being released. If the department receives another request for this same information from an individual who does not have a right of access to the information, the department should request another ruling. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).