



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2011

Ms. Miriam Rodrigues
Administrative Assistant
Harker Heights Police Department
402 Indian Trail
Harker Heights, Texas 76548

OR2011-05773

Dear Ms. Rodrigues:

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# 415478.

The Harker Heights Police Department (the "department") received a request for a copy of the full report for a specified incident. You claim the submitted report 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential such as section 261.201(a) of the Family Code, which provides in pertinent part:

(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:

...

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

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). The report reflects that it was used or developed by the department in its investigation of alleged child abuse. *See id.* § 261.001(1)(C) (definition of child abuse includes “physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child”); *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). Accordingly, we find the report is within the scope of section 261.201 of the Family Code. In this instance, however, the report reveals the requestor is the parent of the alleged child victims listed in the report. Further, the parent is not the individual alleged to have committed the alleged abuse. *See id.* § 261.201(k). Therefore, the department may not use section 261.201(a) to withhold the report from the requestor. *Id.* Section 261.201(l)(2) states, however, that 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). Thus, we will address your argument under section 552.101 in conjunction with section 58.007 of the Family Code.

Section 552.101 also encompasses 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.

Id. § 58.007(c). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party, and not as a suspect or offender. 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 the report is confidential under section 58.007(c). This information, however, does not list any children as suspects or offenders. Furthermore, you have not provided any arguments explaining how this information pertains to an investigation of juvenile delinquent conduct or conduct in need of supervision as defined by the Family Code. *See id.* § 51.03(a), (b). Consequently, you have failed to demonstrate the applicability of section 58.007(c) of the Family Code to the report. However, section 261.201(1)(3) of the Family Code states that the identity of the reporting party must be withheld. *See id.* § 261.201(1)(3). Therefore, in releasing the report, the department must withhold the identifying information we marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The remaining information must be released.¹

¹A small portion of the submitted report contains information related to the requestor that would ordinarily be protected by common-law privacy. However, the requestor has a right of access to this information under section 552.023 of the Government Code. *See Gov't Code* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). However, if the department receives another request for this particular information from a different requestor, then it should again seek a decision from this office.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 415478

Enc. Submitted documents

c: Requestor
(w/o enclosures)