



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 18, 2011

Mr. Floyd M. Akers  
City Attorney  
City of Pflugerville  
P.O. Box 679  
Pflugerville, Texas 78691-0679

OR2011-06967

Dear Mr. Akers:

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# 417849.

The Pflugerville Police Department (the "department") received a request for all reports pertaining to the requestor's son. You state the department has provided some of the requested information to the requestor. You claim the submitted incident reports are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the information submitted in Exhibits B and C pertaining to case number ISD-10090064 does not pertain to the requestor's son, as specified in the request for information. Thus, that information is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, we note report numbers 06020105 and 06020193 were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2006-11146 (2006). In that ruling, we concluded the department must withhold report numbers 06020105 and 06020193 from the requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. We note, however, since the issuance of Open Records Letter No. 2006-11146 (2006), the legislature amended section 261.201 of the Family Code. *See* Act of May 28, 2007, 80th Leg., R.S., ch. 263, § 12, 2007 Tex. Gen. Laws 421, 428, *amended by* Act of June 1, 2009, 81st Leg., R.S., S.B. 1050, § 1 and Act of June 3, 2009, 81st Leg., R.S., S.B. 1182, § 13 (codified as amendments of Fam. Code § 261.201). Thus, the law on which the previous ruling was based has changed, and the department may not rely on Open Records Letter No. 2006-11146

as a previous determination. *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). Accordingly, we will address your arguments against the disclosure of report numbers 06020105 and 06020193, along with the rest of 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 protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant 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 . . . 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; and

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

Fam. Code § 261.201(a), (k), (l). Incident report numbers 06020105, 06020193, and 06100045 reflect they were used or developed in investigations by the department of alleged or suspected child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261); *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 these reports are within the scope of section 261.201 of the Family Code. In this instance, although the requestor is a parent of the child victim listed in report numbers 06020105, 06020193, and 06100045, the requestor is suspected of committing the alleged abuse at issue in report numbers 06020105 and 06100045. As such, report numbers 06020105 and 06100045 may not be provided to the requestor pursuant to section 261.201(k). Fam. Code § 261.201(k) (stating child's parent may not obtain information subject to section 261.201(a) concerning reported abuse or neglect of child if parent is alleged to have committed abuse or neglect). Therefore, the department must withhold report numbers 06020105 and 06100045 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* The requestor, however, is not suspected of having committed the alleged abuse at issue in report number 06020193. In this instance, the department may not use section 261.201(a) to withhold report number 06020193 from the requestor. Fam. Code § 261.201(k). Section 261.201(l)(3), however, states 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, which we have marked, in report number 06020193 under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. As you have not claimed any other exceptions to disclosure for report number 06020193, the department must release the remainder of report number 06020193 to the requestor. *See id.* § 261.201(l)(2).

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. The relevant language of section 58.007 reads:

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

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

*Id.* § 58.007(c), (e), (j)(2). 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). Incident report number 08120227 involves a thirteen-year-old individual suspected of assault and incident report number 06020076 involves a ten-year-old runaway. Thus, we find report number 08120227 involves juvenile delinquent conduct and report number 06020076 involves juvenile conduct indicating a need for supervision. *See id.* § 51.03(a) (defining juvenile "delinquent conduct" for the purposes of section 58.007), .03(b)(3) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). The requestor, however, is the parent of the juvenile suspect listed in the reports. As such, the department may not use section 58.007(c) to withhold report numbers 08120227 and 06020076 from this requestor. *Id.* § 58.007(e). As you have not claimed any other exceptions for report number 08120227, the department must release this information to the requestor. *See id.* § 58.007(j)(2).

We note incident report number 06020076 contains a Texas driver's license number. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public

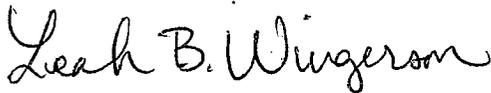
release.<sup>1</sup> Gov't Code § 552.130(a)(1). The department must withhold the Texas driver's license number we have marked in report number 06020076 under section 552.130 of the Government Code.<sup>2</sup>

In summary, the department must withhold report numbers 06020105 and 06100045, as well as the information we have marked in report number 06020193, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the marked Texas driver's license number in report number 06020076 under section 552.130 of the Government Code. The department must release the remaining responsive information to this requestor.<sup>3</sup>

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](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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

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<sup>1</sup>The 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).

<sup>2</sup>This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</sup>Because the requestor has a right of access to information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

Ref: ID# 417849

Enc. Submitted documents

c: Requestor  
(w/o enclosures)