



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2011

Mr. Daniel Cox
Assistant County Attorney
Henderson County
Henderson County Courthouse Room 100
Athens, Texas 75751

OR2011-07143

Dear Mr. Cox:

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# 418216.

The Henderson County Sheriff's Office (the "sheriff") received a request for information pertaining to a named individual. You claim a portion of the submitted information is excepted from disclosure under section 552.108 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."¹ Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides in part as follows:

(a) Except as provided by Section 261.203, the 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:

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

(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; and

Fam. Code § 261.201(a), (k), (l)(2). We note case number 11-04594 pertains to an investigation of sexual assault of a child. Thus, case number 11-04594 consists of files, reports, records, communications, and working papers used or developed in the investigation of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (defining “abuse” for purposes of Fam. Code ch. 261, as including offense of sexual assault under Penal Code § 22.011); *see also* Penal Code § 22.011 (defining “child” for purposes of sexual assault as a child as person under 17 years of age). Accordingly, we find case number 11-04594 is generally confidential under section 261.201. We note, however, the requestor is the legal guardian of the child victim listed in case number 11-04594. Further, the requestor is not alleged to have committed the suspected abuse. Thus, the sheriff may not withhold case number 11-04594 from this requestor on the basis of section 261.201(a). Fam. Code § 261.201(k). However, section 261.201(l)(2) provides any information that is excepted from required disclosure

under the Act or other law may be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, because the sheriff may not withhold case number 11-04594 under section 261.201(a), and you assert section 552.108 of the Government Code for this information, we will consider whether any portion of case number 11-04594 is excepted from required public disclosure under the Act or other law.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. 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.

Id. § 58.007(c), (e). Under section 58.007(c), juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007(c), a "child" is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review, we find case numbers 11-04594 and 09-42690 involve juvenile delinquent conduct and conduct indicating a need for supervision that occurred after September 1, 1997. Although the requestor is the legal guardian of the juvenile at issue in case number 11-04594, the juvenile in case number 11-04594 is now seventeen years old. Thus, we find the requestor no longer has a right of access to this juvenile's law enforcement records under section 58.007(e). *See id.* § 58.007(e). It does not appear any of the exceptions in section 58.007 apply to case

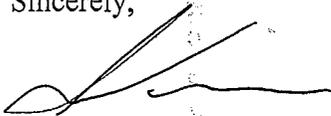
number 11-04594. Accordingly, the sheriff must withhold case number 11-04594 under section 552.101 in conjunction with section 58.007(c).² However, the requestor is the legal guardian of the juvenile offender listed in case number 09-42690. Under section 58.007(e), the requestor has a right to inspect or copy law enforcement records pertaining to this juvenile. *See id.* § 58.007(e). Accordingly, the sheriff must release case number 09-42690 to this requestor pursuant to section 58.007(e).

In summary, the sheriff must withhold case number 11-04594 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. As you raise no exceptions against disclosure of the remaining information, it must be released.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 418216

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive for case number 11-04594, we need not address your argument against it disclosure.