



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2011

Mr. Jason Day
City Attorney
City of Royse City
P.O. Box 638
Royse City, Texas 75189

OR2011-09988

Dear Mr. Day:

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# 423740 (RCCA11-0102).

The City of Royse City (the "city") received a request for the arrest report related to a specified case and for all reports involving the requestor's son. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which states:

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

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the department 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 Chapter 552, Government Code, or other law; and

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

Fam. Code § 261.201(a), (k)–(l). Upon review, we agree the reports related to case numbers 11-04-0084, 09-02-0038, and 10-01-0026 were used or developed in investigations of alleged child abuse or neglect. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). However, we note the requestor is the father of the child victims named in each of these reports. Further, the requestor is alleged to have committed the abuse in the report related to case 11-04-0084. Therefore, as to this report, the requestor does not have a right of access to the information it contains under section 261.201(k). *See id.* § 261.201(k). Rather, the city must withhold the report related to case 11-04-0084 in its

entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ As for the reports related to case numbers 09-02-0038 and 10-01-0026, we find the requestor is not alleged to have committed the abuse. Accordingly, the city may not withhold from this requestor information concerning the alleged abuse in these reports that would otherwise be confidential under section 261.201(a). *See id.* § 261.201(k). As you raise no other exceptions to disclosure for this information, the reports related to case numbers 09-02-0038 and 10-01-0026 must be released to this requestor.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997.² Fam. Code § 58.007(c). Section 58.007 provides:

(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

¹ We note that because section 261.201(a) protects all “files, reports, records, communications, audiotapes, videotapes, and working papers” relating to an investigation of alleged or suspected child abuse, the city must not release basic front-page information in such cases. As our ruling is dispositive, we do not address your argument under section 552.108 of the Government Code for this report.

²The 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).

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:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). *See also id.* § 51.02(2) (defining "child" as a person who is ten years of age or older and younger than seventeen years of age). Upon review, we find the reports related to case numbers 08-02-0003, 08-02-0111, and 10-08-0029 involve conduct by a child that occurred after September 1, 1997, and that constitutes delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). Therefore, these reports are subject to section 58.007. In this instance, however, the requestor is the father of a child suspect listed in each of the reports. Accordingly, section 58.007(e) allows him access to his child's law enforcement records. *Id.* § 58.007(e). Nonetheless, before the city provides the requestor with access to these reports, the city must redact any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor's child, which we have marked. *See id.* § 58.007(j)(1).

In summary, the city must withhold the report related to case number 11-04-0084 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The remaining information must be released.³

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.

³ We note the requestor has a special right of access under sections 261.201(k) and 58.007(e) of the Family Code to information being released in this instance. Therefore, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style and is positioned above the typed name.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/sdk

Ref: ID# 423740

Enc. Submitted documents

c: Requestor
(w/o enclosures)