



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2011

Ms. Tamma Willis
McLennan County Sheriff's Office
901 Washington Avenue
Waco, Texas 76701

OR2011-14847

Dear Ms. Willis:

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# 432999.

The McLennan County Sheriff's Office (the "sheriff") received a request for (1) all information related to the investigation of a specified incident and (2) copies of all calls for service and all incident reports regarding Brookhaven Youth Ranch for a specified period. 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, a portion of which is a representative sample.¹

Initially, you inform us report number 09-2164 was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2010-00709 (2010) and 2010-09295 (2010). In these decisions, we ruled the sheriff must withhold report number 09-2164 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. You do not inform us of any change in the law, facts, and circumstances on which the previous rulings are based. Therefore, the sheriff must continue to rely on these rulings as previous determinations and withhold this information

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

in accordance with the previous rulings. *See* Open Records Decision No. 673 at 6-7 (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). We will address your arguments for the remaining 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.” *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 58.007(c) of the Family Code. This section provides as follows:

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.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a), (b)(3) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). 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). Upon review, we agree report number 07-1792 involves juvenile delinquent conduct that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Accordingly, we find report number 07-1792 is confidential pursuant to section 58.007(c), and the sheriff must withhold this information under section 552.101.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201 provides in relevant part:

(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:

- (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.

Id. § 261.201(a). Upon review, we find report numbers 07-3406 and 08-2223 were used or developed in investigations of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261), 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). Therefore, this information falls within the scope of section 261.201. You do not indicate the sheriff has adopted a rule that governs the release of this information in this instance; therefore, we assume that no such regulation exists. Given that assumption, we conclude report numbers 07-3406 and 08-2223 are confidential under section 261.201(a)(1) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the sheriff must withhold this information under section 552.101 in conjunction with section 261.201.

In summary, the sheriff must continue to rely on Open Records Letter Nos. 2010-00709 and 2010-09295 as previous determinations and withhold report number 09-2164 in accordance with the previous rulings. The sheriff must withhold report number 07-1792 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Report numbers 07-3406 and 08-2223 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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,

A handwritten signature in black ink, appearing to read 'KLC', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 432999

Enc. Submitted documents

c: Requestor
(w/o enclosures)