



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2011

Ms. Donna L. Johnson
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2011-15789

Dear Ms. Johnson:

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# 434714.

The Humble Police Department (the "department"), which you represent, received a request for information pertaining to a named police officer. You state the department has released or will release some of the requested information. You claim the submitted 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.

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. Section 552.101 encompasses information protected by other statutes. Section 58.005 of the Family Code provides that "[r]ecords and files concerning a child, including personally identifiable information, and information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to [certain listed individuals]." Fam. Code § 58.005(a). You do not inform us, and the submitted information at issue does not itself reflect, that any of this information was "obtained for the purpose of diagnosis, examination, evaluation, or

treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court” *Id.* We therefore conclude that this information is not excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.005 of the Family Code.

Section 552.101 of the Government Code also encompasses section 58.007(c) of the Family Code, which 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.

Id. § 58.007(c). Under section 58.007, 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 defined as a person ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party; it is only applicable to juveniles listed as suspects or offenders. *See id.* §§ 58.007. Upon review, we find the information we have marked relates to 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. Therefore, the information we have marked is confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. However, we find the remaining information does not consist of juvenile law enforcement records for purposes of section 58.007. Accordingly, we find you have not demonstrated the applicability of section 58.007(c) of the Family Code to the remaining information, and it may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) [T]he 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.

Id. § 261.201(a). We note the information we have marked consists of files, reports, records, communications, audiotapes, video tapes, or working papers used or developed in an investigation of alleged child abuse or neglect under chapter 261. Accordingly, we find the marked information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family 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). You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the marked information is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

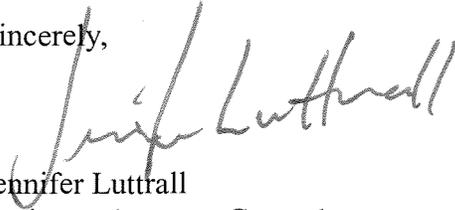
In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code and section 261.201(a) of the Family Code. The remaining information must be released.

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,

A handwritten signature in cursive script that reads "Jennifer Luttrall". The signature is written in black ink and is positioned above the typed name.

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 434714

Enc. Submitted documents

c: Requestor
(w/o enclosures)