



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2011

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-19160

Dear Ms. Byles:

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# 440577 (PIR No. W012227).

The City of Fort Worth (the "city") received a request for a specified offense report. 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.

Section 552.101 of the Government Code excepts from public 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 provides in 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)(2), (3). You state that the submitted information relates to an investigation of alleged child abuse. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes indecency with child, sexual assault, and aggravated sexual assault under Penal Code sections 21.11 and 22.011); *see also* Penal Code §§ 21.11 (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age), 22.011(c)(1) (defining “child” for purposes of section 22.011 as “a person younger than 17 years of age”). Based on your representations and our review, we find that the submitted information falls within the scope of section 261.201(a).

The requestor, however, is a parent of the child victim listed in the incident report, and the requestor is not suspected of having committed the alleged abuse. In this instance, the city may not use section 261.201(a) to withhold the submitted information from this requestor. Fam. Code § 261.201(k). We note, however, the records also pertain to juvenile delinquent conduct. Section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). We will, therefore, consider the applicability of section 58.007 to this information.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Section 58.007 provides, in part:

(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). The submitted incident report involves a ten and twelve-year-old suspected of sexual assault. Thus, we find the report involves juvenile delinquent conduct. *See id.* § 51.03(a) (defining juvenile "delinquent conduct" for purposes of section 58.007). Therefore, the submitted information is within the scope of section 58.007(c). The requestor, however, is the parent of the juvenile suspects listed in the report; therefore, the submitted report may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c).

Section 261.201(1)(3) of the Family Code states that, notwithstanding section 261.201(k), the identity of the reporting party must be withheld. Fam. Code § 261.201(1)(3). We have marked the information the city must withhold under section 552.101 of the Government Code in conjunction with subsection 261.201(1)(3) of the Family Code. The remaining information must be released to this requestor.¹

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/bs

Ref: ID# 440577

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ We note this requestor has a special right of access under sections 261.201(k) and 58.007(e) of the Family Code to the information being released. If the city receives another request for this same information from a different requestor, it must again seek a ruling from this office.