



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 11, 2012

Ms. Linda Pemberton  
Paralegal  
Office of the City Attorney  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540-1329

OR2012-00535

Dear Ms. Pemberton:

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# 442131 (Reference No. W006696).

The Killeen Police Department (the "department") received a request for incident report number 11-014647. You claim the submitted incident report 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 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. This exception encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. 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.

...

(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.

Fam. Code § 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, among other things, a thirteen-year-old suspected of sexual abuse. Thus, we find the report involves juvenile delinquent conduct. *See id.* § 51.03(a) (defining juvenile "delinquent conduct" for the purposes of section 58.007). The requestor, however, is a parent of the juvenile suspect listed in the report. As such, the department may not use section 58.007(c) to withhold the submitted incident report from this requestor. *Id.* § 58.007(e). Section 58.007(j)(2), however, states the department must withhold any information that is excepted from disclosure under other law. *Id.* § 58.007(j)(2). We note the submitted incident report is

subject to section 261.201 of the Family Code. Accordingly, we will address the applicability of section 261.201 to this information, as well as your argument under section 552.108 of the Government Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. This section 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 the submitted incident report was used or developed in an investigation 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 department has adopted a rule that governs the release of the information in this instance; therefore, we assume that no such regulation exists. Given that assumption, we conclude the submitted incident report is confidential under section 261.201(a)(1) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>1</sup>

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](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 'K. Conyer', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/dls

Ref: ID# 442131

Enc. Submitted documents

c: Requestor  
(w/o enclosures)