



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2012

Ms. Sandy Murillo
Records Clerk
Saginaw Police Department
505 West McLeroy Boulevard
Saginaw, Texas 76179

OR2012-11549

Dear Ms. Murillo:

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# 460098 (PD Records ID# 6352).

The Saginaw Police Department (the "department") received a request for information pertaining to a specified incident. 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 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 other statutes make confidential. 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.

Fam. Code § 58.007(c). 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). In this instance the listed suspect was nine years old at the time of the offense. Because the legislature has chosen to protect only the law enforcement records of a child who is between the ages of ten and sixteen at the time of the reported conduct, we find the submitted information is not confidential under section 58.007(c). *See Open Records Decision No. 478 at 2 (1987)* (language of confidentiality statute controls scope of protection). Accordingly, we find the submitted information does not identify a juvenile suspect or offender for purposes of section 58.007. As you have not demonstrated the applicability of section 58.007(c) to this information, we conclude the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in pertinent part as follows:

(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, other than the [Texas Department of Family and Protective Services] 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.

(1) 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), (1)(2)-(3). We find the information at issue consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a)(2). *See id.* § 261.001(1) (defining “abuse,” for purposes of Fam. 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). We conclude the submitted information is confidential under section 261.201(a) of the Family Code.

In this instance, however, the requestor may be a parent, managing conservator, or other legal representative of the child who was the victim of the alleged abuse, and the requestor was not accused of committing the alleged abuse. Therefore, pursuant to section 261.201(k), the submitted information may not be withheld from the requestor on the basis of section 261.201(a) if she is the child’s parent, managing conservator, or other legal representative. *See id.* § 261.201(k). As we are unable to determine whether the requestor is the child’s parent, managing conservator, or other legal representative, we must rule conditionally. Thus, if the requestor is not the child’s parent, managing conservator, or other legal representative, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. But if the requestor is the child’s parent, managing conservator, or other legal representative, the submitted information may not be withheld under section 552.101 on the basis of section 261.201(a) of the Family Code. *See id.* § 261.201(k). Section 261.201(1)(3), however, states the identity of the reporting party must be withheld from disclosure. *Id.* § 261.201(1)(3). Furthermore, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider your remaining arguments against disclosure of the submitted information.

Section 552.108(a)(2) of the Government Code excepts “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal

investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

You state the submitted information pertains to a closed case that did not result in conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) is applicable to the submitted report.

We note section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. As noted above, the identity of a party who makes a report of abuse or neglect must be withheld under section 261.201(1)(3) of the Family Code. Fam. Code § 261.201(1)(3). Accordingly, in releasing the basic information, the department must withhold the reporting party's identifying information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

We understand the department to claim the remaining basic information is subject to the doctrine of common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

We find that the department would normally have to withhold some or all of the basic information under common-law privacy. However, as the requestor may be the parent, managing conservator, or other legal representative of the child with the privacy interest, the requestor would have a special right of access to information that would ordinarily be withheld to protect the child's common-law privacy, and such information cannot be withheld from her on that basis. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Accordingly, the department may not withhold any of the basic information pursuant to section 552.101 on the basis of common-law privacy.

In summary, if the requestor is not the parent, managing conservator, or other legal representative of the child victim listed in the submitted information, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the child victim's parent, managing conservator, or other legal representative, then with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. However, in releasing basic information, the department must withhold the reporting party's identity, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 460098

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because the requestor has a right of access to information the department would be required to withhold from the general public, the department must request another decision if it receives another request for this same information from a different requestor. See Gov't Code §§ 552.301(a), .302.