



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2012

Mr. Mark G. Daniel
Counsel for the City of Watauga
Evans, Daniel, Moore, Evans & Lazarus
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2012-12205

Dear Mr. Daniel:

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# 461239 (PIA Request 12-218).

The Watauga Police Department (the "department"), which you represent, received a request for two specified incident reports. 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 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 as follows:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [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.

(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[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we agree the submitted information was used or developed in investigations of alleged child abuse or neglect. *See 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 disabilities of minority removed for general purposes), 261.001 (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *see also* Penal Code § 21.11 (defining “child” for purposes of indecency with a child as person under 17 years of age). Therefore, we find the submitted information is generally confidential under section 261.201(a) of the Family Code. However, we note the requestor is the step-mother of the child victim in the reports, and she is not alleged to have committed the alleged abuse or neglect. As such, you acknowledge this requestor may have a right of access to the information at issue pursuant to section 261.201(k). Fam. Code § 261.201(k). Thus, if the requestor is not the child victim’s managing conservator or legal representative, then the submitted information must be withheld in its entirety from the requestor under section 552.101 in conjunction with section 261.201(a) of the Family Code. On the other hand, if the requestor is the child’s managing conservator or legal representative, the department may not use section 261.201(a) to withhold this information from the requestor.

Id. However, section 261.201(1)(2) provides that any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(1)(2). Therefore, we will address your argument under section 552.101 of the Government Code for the submitted information.

Section 552.101 of the Government Code also encompasses information protected by section 58.007 of the Family Code, which provides in relevant 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.

Id. § 58.007(c). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of Fam. Code § 58.007). For purposes of section 58.007(c), a “child” is 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). 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. Upon review, we find the reports at issue involve a child allegedly engaged in 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. Thus, the submitted information is confidential in its entirety pursuant to section 58.007(c) of the Family Code, and the department must withhold it under section 552.101 of the Government Code.

In summary, if the requestor is not the managing conservator or legal representative of the child victim at issue in the submitted information, the department must withhold this information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. In the event the requestor is the managing conservator or legal representative of the child victim in the submitted information, the

department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/tch

Ref: ID# 461239

Enc. Submitted documents

c: Requestor
(w/o enclosures)