



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

September 10, 2012

Mr. Ronald J. Bounds  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2012-14348

Dear Mr. Bounds:

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# 464553 (City File No. 452).

The City of Corpus Christi (the "city") received a request for five categories of information related to a specified incident, a named individual, and a named police officer. You state the city is making available some of the responsive information, subject to any redactions under section 552.130 of the Government Code or Open Records Decision 684 (2009).<sup>1</sup> 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

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<sup>1</sup>Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general opinion. ORD 684.

Code § 552.101. This exception encompasses information that other statutes make confidential. Section 58.007 of the Family Code 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:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child[.]

Fam. Code § 58.007(c), (e), (j)(1). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007). 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).

You seek to withhold report numbers 01-017241, 00-029338, 04-003901, and 01-017249 under section 552.101 in conjunction with section 58.007 of the Family Code. We agree report numbers 01-017241 and 00-029338 involve children engaged in delinquent conduct after September 1, 1997. As such, this information is subject to section 58.007(c). You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to report number 01-017241. Thus, report number 01-017241 is confidential in its entirety pursuant to section 58.007(c) of the Family Code, and the city must withhold it under section 552.101 of the Government Code.

We note the requestor is an attorney representing one of the juvenile suspects listed in report number 00-029338. Therefore, in accordance with section 58.007(e), the requestor has a right to inspect juvenile law enforcement records concerning his client, and the city may not use section 58.007(c) to withhold report number 00-029338 from this requestor. *See id.* § 58.007(e). However, any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted pursuant to section 58.007(j)(1) of the Family Code. *See id.* § 58.007(j)(1). Thus, the city must withhold the information identifying other juvenile suspects, which we have marked, in report number 00-029338 under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.

Report number 04-003901 also involves delinquent conduct that occurred after September 1, 1997. We note one of the suspects listed in the report was older than seventeen years of age at the time of the conduct at issue. However, we are unable to determine the age of the second suspect listed in the report. Accordingly, we must rule conditionally. It does not appear any of the exceptions in section 58.007 apply to the information at issue. Thus, if this report involves a suspect who was ten years of age or older and under seventeen years of age at the time of the conduct at issue, report number 04-003901 is confidential pursuant to section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. However, if this information pertains to a suspect who was not ten years of age or older and under seventeen years of age at the time of the conduct at issue, report number 04-003901 is not confidential pursuant to section 58.007(c) and may not be withheld under section 552.101 on that basis. We note the remaining report at issue, report number 01-017249, is not a juvenile law enforcement record for the purposes of section 58.007(c) of the Family Code. Therefore, report number 01-017249 may not be withheld under section 552.101 in conjunction with section 58.007(c) of the Family Code.

Next, you raise section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code for report number 95-026015. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. *See Open Records Decision No. 181 (1977)* (concluding former section 51.14(d) of the Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by former section 51.14(d), which was

continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 applies to records of a “child,” which is defined as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Former section 51.14 provided in relevant part as follows:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

*Id.* § 51.14 (repealed 1995). In this instance, report number 95-026015 pertains to juveniles engaged in delinquent conduct before January 1, 1996. *See id.* § 51.03 (defining “delinquent conduct”). The exceptions to former section 51.14(d) do not apply to the requestor. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Fam. Code § 51.14(d)(1), (2), (3)). Therefore, report number 95-026015 is confidential under former section 51.14(d) of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses section 261.201 of the Family Code, which states:

(a) Except as provided by Section 261.203, the 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.

...

(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.

(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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information[.]

Fam. Code § 261.201(a), (k), (l)(1). You claim report numbers 04-043659, 1010040044, 97-075281, and 97-078276 were used or developed in investigations of alleged child abuse. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). Upon review, we agree this information is within the scope of section 261.201(a) of the Family Code. You have not indicated the city’s police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, report numbers 04-043659 and 1010040044 are confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.

However, we note the requestor is an attorney representing a child victim listed in report numbers 97-075281 and 97-078276, who is now over eighteen years of age. Accordingly, the requestor has a right of access to those reports pursuant to section 261.201(k). *See id.* 261.201(k). However, section 261.201(l) provides that before a child can copy and inspect a record of a child under section 261.201(k), any personally identifiable information about any other victim or witness under eighteen years of age must be redacted. *Id.* 261.201(l)(1). Therefore, the city must withhold from report numbers 97-075281 and 97-078276 the personally identifiable information of child victims and witnesses who are not

the requestor's client, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(1) of the Family Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. This office has also held common-law privacy generally protects the identities of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007(c). We note report number 01-017249 contains the identifying information of a juvenile offender, which we have marked. Therefore, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold report number 01-017241 in its entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code, and the information we have marked in report number 00-029338 under section 552.101 in conjunction with 58.007(j)(1) of the Family Code. If report number 04-003901 involves a suspect who was ten years of age or older and under seventeen years of age at the time of the conduct at issue, that report must be withheld in its entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code. The city must withhold report number 95-026015 under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code. The city must withhold report numbers 04-043659 and 1010040044 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code, and the information we have marked in report numbers 97-075281 and 97-078276 under section 552.101 in conjunction with section 261.201(1)(1) of the Family Code. The city must withhold the information we have marked in report number 01-017249 under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.<sup>2</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), or call the Office of the Attorney General's Open Government Hotline, toll free,

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<sup>2</sup>Because this requestor has a special right of access to some of the information being released, if the city receives another request for this information from an individual other than this requestor, the city must again seek a decision from this office.

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 "Michelle R. Garza", with a long horizontal line extending to the right.

Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 464553

Enc. Submitted documents

c: Requestor  
(w/o enclosures)