



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 7, 2012

Mr. Nathan L. Brown  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, Ninth Floor  
El Paso, Texas 79901

OR2012-17845

Dear Mr. Brown:

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# 470433.

The El Paso Police Department (the "department") received a request for any police reports involving the requestor in the past three years. 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 section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant part:

[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.

(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 by the department of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes indecency with a child under Penal Code section 21.11 and sexual assault and aggravated sexual assault under Penal Code sections 22.011 and 22.021); Penal Code §§ 21.11(a) (defining “child” for purposes of Penal Code section 21.11 as a person under 17 years of age), 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as person under 17 years of age). Therefore, incident report numbers 10-283113 and 12-153015 are confidential under section 261.201 of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code.<sup>1</sup> We note, however, the requestor is the parent of the child victim named in incident report number 10-181297. Further, the requestor is not the individual alleged to have committed the alleged abuse in incident report number 10-181297. *See* Fam. Code § 261.201(k). Accordingly, the department may not

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

withhold incident report number 10-181297 from the requestor under section 261.201(a). *Id.* Additionally, section 261.201(l)(2) states that any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will consider your remaining arguments under sections 552.101 and 552.108 of the Government Code for incident report number 10-181297.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. 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(c) of the Family Code. *Id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Section 58.007 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). For purposes of section 58.007(c), a “child” is a person ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we agree that incident report number 10-181297 involves a child engaged in delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Therefore we find incident report number 10-181297 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.<sup>2</sup>

In summary, the department must withhold incident report numbers 10-283113 and 12-153015 in their entirety under section 552.101 of the Government Code in

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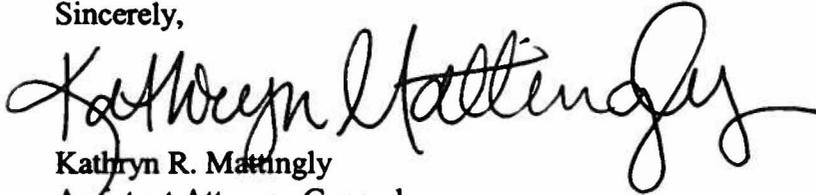
<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

conjunction with section 261.201 of the Family Code. The department must withhold incident report number 10-181297 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 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](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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/dls

Ref: ID# 470433

Enc. Submitted documents

c: Requestor  
(w/o enclosures)