



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2013

Ms. Karon Newby-Cooley
Records Clerk
Central Records Division
Pflugerville Police Department
P.O. Box 679
Pflugerville, Texas 78691-0679

OR2013-19780

Dear Ms. Newby-Cooley:

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# 505541 (Ref. No. W000629-082713).

The Pflugerville Police Department (the "department") received a request for police report numbers 13040389 and 11110287. 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 Code § 552.101. Section 552.101 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:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). You claim the submitted information was used or developed in investigations of the alleged abuse of children. *See id.* § 261.001(1) (defining “abuse” for purposes of Family Code chapter 261); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). Upon review, we agree report number 11110287 was used or developed in an investigation under chapter 261 and is within the scope of section 261.201 of the Family Code. You have not indicated the 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 number 11110287 is confidential under section 261.201 of the Family Code, and must be withheld under section 552.101 of the Government Code.

We also agree report number 13040389 was used or developed in an investigation under chapter 261 and is within the scope of section 261.201 of the Family Code. However, in that

report the requestor is a parent of two of the child victims and is not accused of committing the alleged abuse. Therefore, the information at issue may not be withheld from this requestor under section 552.101 on the basis of section 261.201(a). *See id.* § 261.201(k). Nevertheless, section 261.201(1)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 261.201(1)(2). Therefore, we will address the department's remaining argument against disclosure of this information.

Section 552.101 of the Government Code also encompasses 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 by a child 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 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). Upon review, we find report number 13040389 involves a child allegedly engaged in delinquent conduct that occurred after September 1, 1997. We note, although the report reflects the requestor is a parent of the juvenile suspect, the juvenile suspect is now an adult. Accordingly, the requestor no longer has a right of access to his adult child's records under section 58.007(e). *See id.* § 58.007(e). You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Thus, report number 13040389 is confidential under section 58.007(c) of the Family Code, and must be withheld under section 552.101 of the Government Code.

In summary, the department must withhold report number 11110287 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, and must withhold report number 13040389 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to 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# 505541

Enc. Submitted documents

c: Requestor
(w/o enclosures)