



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2014

Ms. Michelle T. Rangel
Assistant County Attorney
County of Fort Bend
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2014-05368

Dear Ms. Rangel:

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# 518231.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for a specified incident report. 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 representative sample of information.¹

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 information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads as follows:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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 Subchapter 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:

...

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

Fam. Code § 58.007(c), (e), (j)(2). 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 when the conduct occurred. *See id.* § 51.02(2). We find the submitted report involves an allegation of a juvenile engaged in delinquent conduct that occurred after September 1, 1997. Thus, this information is subject to section 58.007. However, the juvenile at issue is in foster care and the requestor is a representative of the foster agency through which the juvenile at issue was placed. Section 58.007(e) allows the review or copy of juvenile law enforcement records by a child's parent or guardian. *Id.* § 58.007(e). Section 51.02 defines a guardian as "the person who,

under court order, is the guardian of the person of the child or the public or private agency with whom the child has been placed by a court.” *Id.* § 51.02(4). We understand foster children are generally under the conservatorship of the Texas Department of Family and Protective Services (“DFPS”), and the courts may order certain parties to provide certain care and to have certain responsibilities. *See, e.g., id.* §§ 161.207-.208, 263.001, 264.122, 266.001, 266.004. We are unable to determine whether the requestor is a guardian of the juvenile suspect at issue for purposes of section 58.007(e). Accordingly, we must rule conditionally. If the sheriff’s office determines the requestor is not the guardian of the juvenile suspect for purposes of section 58.007(e), then the submitted information is confidential under section 58.007(c), and the sheriff’s office must withhold the submitted information in its entirety under section 552.101 of the Government Code. If the sheriff’s office determines the requestor is the guardian of the juvenile suspect at issue for purposes of section 58.007, then the requestor has a right to inspect information concerning that child under section 58.007(e). *Id.* § 58.007(e). However, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, we will address your remaining arguments against disclosure.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201 provides, in relevant part:

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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.

Id. § 261.201(a), (k), (1)(2)-(3). You assert the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(definition of “abuse” for purposes of chapter 261 of the Family Code); *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). Upon review, we find the submitted information is within the scope of section 261.201(a). Therefore, we conclude the submitted information is generally confidential under section 261.201(a). However, the child victim at issue is in foster care and the requestor is a representative of the foster agency through which the child victim was placed. Thus, the requestor may be the managing conservator or other legal representative of the child victim at issue. Additionally, the requestor is not alleged to have committed the alleged or suspected child abuse or neglect. Section 261.201(k) provides a “parent, managing conservator, or other legal representative” of the child has a right of access to information otherwise confidential under section 261.201(a). We understand foster children are generally under the conservatorship of the state and parties such as foster parents and foster agencies may have legal responsibilities toward such children. We are unable to determine whether the requestor is a managing conservator or other legal representative of the child victim for the purposes of section 261.201(k). Accordingly, we must rule conditionally. If the requestor is not a managing conservator or other legal representative of the child victim at issue, then the sheriff’s office 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.² However, if the requestor is a managing conservator or other legal representative of the child victim, then the sheriff’s office may not use section 261.201(a) to withhold the information at issue from this requestor. *See id.*

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

§ 261.201(k). Section 261.201(1)(2) provides information excepted from required disclosure under the Act or other law must be withheld from disclosure. *See id.* § 261.201(1)(2). Therefore, in the event the requestor is a managing conservator or other legal representative of the child victim, we address your argument to withhold the submitted information under section 552.108 of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[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 that 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 information at issue pertains to a closed case that did not result in conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to the information at issue.³

We note, however, section 552.108 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 also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). In this instance, basic information reveals the identity of the reporting party. Section 261.201(1)(3) of the Family Code states the identity of the reporting party must be withheld. Fam. Code § 261.201(1)(3). Thus, with the exception of basic information, the sheriff’s office may withhold the submitted information under section 552.108(a)(2) of the Government Code. In releasing basic information, the sheriff’s office must withhold the reporting party’s identity under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

In summary, if the requestor is not a guardian of the juvenile suspect at issue for purposes of section 58.007(e), then the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the requestor is a guardian of the juvenile suspect but is not a managing conservator or other legal representative of the child victim, then the submitted information must be withheld 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 both a guardian of the juvenile

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

suspect and a managing conservator or other legal representative of the child victim, then with the exception of basic information, which must generally be released, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code. However, in releasing basic information, the sheriff's office must withhold the reporting party's identity under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) 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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 518231

Enc. Submitted documents

c: Requestor
(w/o enclosures)