



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 21, 2016

Ms. Leslie O. Haby
Assistant Criminal District Attorney
Civil Section
Bexar County
101 West Nueva Street, Seventh Floor
San Antonio, Texas 78205

OR2016-01609

Dear Ms. Haby:

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# 595181 (BCDA File# 4565).

The Bexar County Sheriff's Office (the "sheriff's office") received a request for a specified sheriff's office report. You claim the submitted information is excepted from disclosure under section 552.108 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 261.201(a) of the Family Code, which provides:

(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.

Fam. Code § 261.201(a). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). Therefore, we determine the information at issue is generally confidential pursuant to section 261.201 of the Family Code. However, section 261.201(a) provides information encompassed by that section may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). The information at issue is also subject to section 58.007 of the Family Code, which constitutes applicable state law for purposes of section 261.201(a). Accordingly, we will address the applicability of section 58.007 to the submitted information.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. The relevant language of section 58.007 reads as follows:

(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.

Id. § 58.007(c), (e). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a), (b)(3) (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). Upon review, we find the submitted information involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Therefore, this information is generally confidential under section 58.007(c) of the Family Code.

However, the requestor is a representative of the Northside Independent School District Police Department (the "department"), and section 58.007(e) gives a "criminal justice agency as . . . defined by Section 411.082, Government Code" a right of access to juvenile law enforcement records. *Id.* § 58.007(e). Section 411.082 of the Government Code defines a "criminal justice agency" as including "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]" Gov't Code § 411.082(3)(A). We understand the department is a criminal justice agency as defined by section 411.082. *See id.* Therefore, the requestor generally has a right of access to the information at issue under section 58.007(e) of the Family Code. Although you claim the submitted information is excepted under section 552.108 of the Government Code, a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act).* Therefore, the submitted information may not be withheld from this requestor under section 552.108 of the Government Code.

Nevertheless, as noted above, the information is also subject to section 261.201(a) of the Family Code. Records subject to section 261.201 may be disclosed under applicable state law and for purposes consistent with the Family Code. *See Fam. Code* § 261.201(a). Section 58.007(e) is applicable state law allowing disclosure to the department. However, the sheriff's office must determine whether releasing the information to the department is consistent with the Family Code.

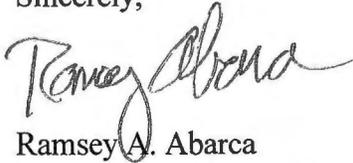
If the sheriff's office determines the department does not intend to use the information for purposes consistent with the Family Code, then the sheriff's office must withhold this information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See id.* § 261.201(b)-(g), (k), (l) (listing entities authorized to receive section 261.201 information); *Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute).* However, if the sheriff's

office determines the department intends to use the information for purposes consistent with the Family Code, then the requestor has a right of access to this information pursuant to section 58.007(e) of the Family Code and it must be released.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 595181

Enc. Submitted documents

c: Requestor
(w/o enclosures)