



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 12, 2016

Ms. Kristie L. Lewis
Houston Police Department Staff Attorney
City of Houston
1200 Travis, 21st Floor
Houston, Texas 77002-6000

OR2016-18316

Dear Ms. Lewis:

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# 622591 (ORU No. 16-3963).

The Houston Police Department (the "department") received a request for information pertaining to a specified incident. 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.

Initially, we note some of the submitted information is not responsive to the request for information because it was created after the date the department received the request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information in response to this request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *See* Gov't Code § 552.101. Section 552.101 encompasses section 58.007 of the Family Code. Section 58.007 of the Family Code makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 58.007(c). Law enforcement records pertaining to juvenile conduct that occurred before January 1, 1996 are governed by former section 51.14(d) of the Family Code, 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.

This office has concluded that section 58.007 of the Family Code, as enacted by the Seventy-fourth Legislature, does not make confidential juvenile law enforcement records relating to conduct that occurred on or after January 1, 1996. Open Records Decision No. 644 (1996). The Seventy-fifth Legislature, however, amended section 58.007 to once again make juvenile law enforcement records confidential effective September 1, 1997. Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187. It chose not to make this most recent amendment retroactive in application. Consequently, law enforcement records pertaining to juvenile conduct that occurred between January 1, 1996 and September 1, 1997 are not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007 of the Family Code. The submitted information consists of an offense report concerning juvenile conduct that occurred on July 28, 1997; therefore, the submitted information is not confidential under section 51.14 or 58.007 and it may not be withheld pursuant to section 552.101 of the Government Code on either basis.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which 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.

Fam. Code § 261.201(a). Upon review, we find the submitted information pertains to an investigation of alleged or suspected child abuse and, thus, falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for the purposes of this section as a 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), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Because the department does not indicate it has adopted a rule that governs the release of this type of information, we assume

no such regulation exists. Thus, the information is generally confidential pursuant to section 261.201 of the Family Code.

However, section 261.201(a) provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). We note the requestor is a representative of the Harris County Public Defender’s Office (the “public defender’s office”). Section 411.1272 of the Government Code provides:

The office of capital and forensic writs and a public defender’s office are entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a criminal case in which an attorney compensated . . . by the public defender’s office has been appointed.

Gov’t Code § 411.1272. “Public defender’s office” has the meaning assigned by article 26.044(a) of the Code of Criminal Procedure. *Id.* § 411.082(6); *see also* Crim. Proc. Code art. 26.044(a)(4). In addition, section 411.087(a) of the Government Code provides:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Gov’t Code § 411.087(a)(2). “Criminal history record information” (“CHRI”) is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2).

Accordingly, the requestor is authorized to obtain the CHRI in the submitted information from the department pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which the requestor is appointed. *See id.* §§ 411.087(a)(2), .1272. Furthermore, as noted above, section 261.201(a) states any release must be “for purposes consistent with the Family Code.” *See* Fam. Code § 261.201(a). This office cannot determine whether the release of the information is consistent with the Family Code. Therefore, if the department determines release of the CHRI is consistent with the

Family Code and relates to a criminal case in which the requestor is appointed, then the department must release the information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In this instance, the department must withhold the remaining responsive information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the department determines release of the CHRI is not consistent with the Family Code or does not relate to a criminal case in which the requestor is appointed, then the department must withhold the responsive information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 622591

Enc. Submitted documents

c: Requestor
(w/o enclosures)