



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 17, 2016

Ms. Nicole R. Burns
Counsel for City of Burkburnett
Shahan, Guevara, Decker Arrot
201 South Lakeline Boulevard, Suite 202
Cedar Park, Texas 78613

OR2016-23245

Dear Ms. Burns:

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# 636293.

The City of Burkburnett (the "city"), which you represent, received a request for 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.

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 provides, in pertinent part, 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.

Fam. Code § 58.007(c). 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. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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 conduct at issue. *See id.* § 51.02(2). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, or witness, or other involved party and not as a suspect or offender. Upon review, we find none of the submitted information identifies juvenile suspects or offenders for the purposes of section 58.007. Thus, we find you have failed to demonstrate the applicability of section 58.007(c) to the submitted information and the city may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information protected by 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 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). The submitted information may pertain to a report of alleged abuse or neglect made to the city. *See 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). However, we are

unable to determine the age of the victim in the information at issue. Thus, we must rule conditionally. If the submitted information pertains to an incident involving a victim of alleged or suspected abuse or neglect who was under the age of eighteen at the time of the incident at issue, then the information is subject to section 261.201 of the Family Code. In that case, the city must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If, however, the victim in the information at issue was eighteen years of age or older at the time of the incident, we find you have failed to demonstrate this information involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 of the Family Code, or this information was used or developed in an investigation under chapter 261. In that instance, we conclude the city may not withhold the submitted information under section 552.101 on this basis.

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,



Jesse Harvey
Assistant Attorney General
Open Records Division

JH/bw

Ref: ID# 636293

Enc. Submitted documents

c: Requestor
(w/o enclosures)