



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2009

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center, 9th Floor
El Paso, Texas 79901

OR2009-01048

Dear Ms. Sandoval-Walker:

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# 333139.

The El Paso Police Department (the "department") received a request for a copy of incident request number 08-300159. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

¹Although you also raise section 552.108 of the Government Code as an exception to disclosure, you have provided no arguments explaining how this exception is applicable to the submitted information. Therefore, the department has waived its claim under this exception. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general).

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.

Fam. Code § 58.007(c). Section 58.007 is only applicable to records pertaining to juvenile suspects or offenders. *See id.*; *see also id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party. Upon review of the submitted information, we note that it does not identify a juvenile suspect or offender engaged in delinquent conduct or conduct indicating a need for supervision for purposes of this section. Therefore, we conclude that you have failed to establish that section 58.007 is applicable to this information. Accordingly, the department may not withhold any of the submitted information under section 552.101 of the Government Code on this basis.

Section 552.101 also encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a); *see also id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). In this instance, although the submitted information involves two

children, you have not demonstrated, and the report itself does not reflect, that the information at issue relates to a report or investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. We therefore conclude you have failed to establish that any portion of the submitted information is confidential under section 261.201 of the Family Code, and the department may not withhold any information on that basis. As you raise no further exceptions to disclosure, all of the requested information must be released to the requestor.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/jb

Ref: ID# 333139

Enc. Submitted documents

c: Requestor
(w/o enclosures)