



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-03289

Dear Mr. Phillips:

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# 335711 (City of Fort Worth Public Information Request No. 0886-09).

The Fort Worth Police Department (the "department") received a request for information related to incident report number 02451473. You claim the requested 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 public 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 261.201 of the Family Code, which 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 [the Family 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 report consists of information used or developed in an investigation under chapter 261; therefore, the report is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *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). Thus, the submitted report is generally confidential under section 261.201 of the Family Code. We note, however, the requestor is a representative of the Arkansas Department of Correction (the “ADC”).¹ Section 261.201(a) also provides that 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). In this instance, section 58.007 of the Family Code may constitute “applicable state law” for purposes of section 261.201(a).

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. For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). 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

¹The requestor indicates the information at issue is subject to the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Program (the “Jacob Wetterling Act”) which provides that “[t]he information collected under a State [sex offender] registration program may be disclosed for any purpose permitted under the laws of the State.” 42 U.S.C. § 14071(e)(1). However, upon review of the Jacob Wetterling Act, we can find no release provision applicable to the information at issue.

(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.

Id. § 58.007(c), (e). We find the submitted report involves allegations of juvenile conduct in violation of penal statutes that occurred after September 1, 1997. Thus, this information is subject to section 58.007. However, as stated above, the requestor is the ADC. 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. 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). If the department determines the ADC is a criminal justice agency as defined by section 411.082, then the ADC has a right of access to the submitted report under section 58.007(e), and section 58.007(e) constitutes "applicable state law" for purposes of section 261.201(a).

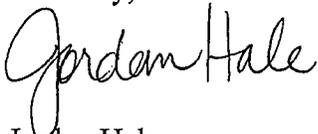
In addition to a right of access under "applicable state law," section 261.201(a) also requires that release be "for purposes consistent with the [Family Code]." If the department determines the ADC has a right of access to the submitted report under section 58.007(e) and intends to use the report for purposes consistent with the Family Code as required by section 261.201(a), then the department must release the report to the ADC. If the department determines the ADC does not have a right of access to the report under section 58.007(e) or does not intend to use the report for purposes consistent with the Family Code, then the department must withhold the submitted report in its entirety pursuant to section 552.101 Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute); Fam. Code § 261.201(b)-(g) (listing entities authorized to receive 261.201 information).

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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 335711

Enc. Submitted documents

cc: Requestor
(w/o enclosures)