



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2009

Mr. Ron G. MacFarlane, Jr.
Dealey, Zimmermann, Clark, Malouf & MacFarlane, P.C.
Attorney for City of Cedar Hill
3131 Turtle Creek Boulevard, Suite 1201
Dallas, Texas 75219-5415

OR2009-12043

Dear Mr. MacFarlane:

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# 353527.

The City of Cedar Hill (the "city"), which you represent, received a request for information pertaining to a specified incident. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct or conduct in need of supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See* Fam. Code § 51.03(a), (b) (defining "delinquent conduct" or "conduct indicating a need for supervision"). For purposes of 58.007, a "child" is a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *Id.* § 51.02(2). The relevant language of the Family Code under 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 Subchapter B.

...

(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.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007. Upon review, we find that the information at issue involves allegations of juvenile delinquent conduct that occurred after September 1, 1997. Thus, the submitted information is subject to section 58.007. The submitted information indicates the requestor is the parent of one of the juvenile suspects listed in the submitted report. Under subsection (e), the child's parent or guardian may inspect a file or record related to the child. *Id.* § 58.007(e). However, section 58.007(j) states that information subject to any other exception to disclosure under the Act or other law must also be redacted. *Id.* § 58.007(j)(2).

Accordingly, we will consider whether the submitted information is excepted from disclosure under an exception to the Act or other law.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in part:

(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 [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.

Id. § 261.201(a). Upon review, we agree that the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes indecency with a child under Penal Code section 21.11, sexual assault under Penal Code section 22.011 or aggravated sexual assault under Penal Code section 22.021). Thus, we find that this information is within the scope of section 261.201 of the Family Code. You have not indicated that the city's police department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the submitted information is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

A handwritten signature in cursive script that reads "Paige Savoie".

Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 353527

Enc. Submitted documents

cc: Requestor
(w/o enclosures)