



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2009

Deputy D. Huffman
Parker County Sheriff's Office
129 Hogle Street
Weatherford, Texas 76086

OR2009-13742

Dear Deputy Huffman:

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# 356906.

The Parker County Sheriff's Office (the "sheriff") received a request for all offense and call reports related to a specified address. You state that some responsive information has been released to the requestor. You claim that the submitted information is confidential under several provisions of the Texas Family Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.² Section 552.101 encompasses information protected by other statutes, including section 261.201 of the Family Code, which provides as follows:

¹We assume that the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²Although you did not specifically raise section 552.101, this exception is the proper exception to raise in conjunction with other statutes that make information confidential by law.

(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.

(k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Serv. 4324, 4327-28 (Vernon) (to be codified at Fam. Code § 261.201(k), (l)). The information at issue consists of files, reports, records, communications or working papers used or developed in an investigation of child abuse under chapter 261 of the Family Code. See Fam. Code § 261.001(1)(E) (definition of "child abuse" includes indecency with a child under Penal Code section 21.11); 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). Therefore, we find the information at issue is generally confidential under section 261.201 of the Family Code.

We note, however, that the requestor may be a managing conservator or other legal representative of the child victim listed in the information. Further, this individual is not alleged to have committed the suspected abuse. As it is not clear whether the requestor is the child's managing conservator or other legal representative for purposes of section 261.201 (k), we must rule conditionally. If the requestor is not a managing conservator or other legal representative of the child victim listed in the report, the information at issue must be withheld in its entirety under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. If the requestor is a managing conservator or other legal representative in this instance, the sheriff may not use section 261.201(a) to withhold the information at issue from this requestor. *Id.* § 261.201(k). Section 261.201(l)(2), however, states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider the applicability of the other sections of the Family Code that you raise.

Section 552.101 also encompasses section 58.007 of the Family Code, which provides in relevant part:

(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, D, and E.

Fam. Code § 58.007(c). In order for section 58.007(c) to apply, a child must be identified in the information at issue as a suspect or offender. *See id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). 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, we conclude the information at issue does not identify a child as a suspect or offender. Accordingly, the information at issue may not be withheld under section 58.007 of the Family Code in conjunction with section 552.101 of the Government Code.

You also raise section 58.002 of the Family Code, which provides as follows:

(a) Except as provided by Chapter 63, Code of Criminal Procedure, a child may not be photographed or fingerprinted without the consent of the juvenile court unless the child is taken into custody or referred to the juvenile court for conduct that constitutes a felony or a misdemeanor punishable by confinement in jail.

(b) On or before December 31 of each year, the head of each municipal or county law enforcement agency located in a county shall certify to the juvenile board for that county that the photographs and fingerprints required to be destroyed under Section 58.001 have been destroyed. The juvenile board shall conduct or cause to be conducted an audit of the records of the law enforcement agency to verify the destruction of the photographs and fingerprints and the law enforcement agency shall make its records available for this purpose. If the audit shows that the certification provided by the head of the law enforcement agency is false, that person is subject to prosecution for perjury under Chapter 37, Penal Code.

(c) This section does not prohibit a law enforcement officer from photographing or fingerprinting a child who is not in custody if the child’s parent or guardian voluntarily consents in writing to the photographing or fingerprinting of the child.

(d) This section does not apply to fingerprints that are required or authorized to be submitted or obtained for an application for a driver’s license or personal identification card.

(e) This section does not prohibit a law enforcement officer from fingerprinting or photographing a child as provided by Section 58.0021.

Fam. Code § 58.002. We understand you to assert that the photographs related to the requested offense reports are confidential under section 58.002. However, section 58.002 of the Family Code does not make such photographs confidential. Rather, section 58.002

provides guidelines for the photographing and fingerprinting of juvenile offenders, and the retention and destruction of such photographs or fingerprints. *See* Attorney General Opinion DM-435 at 3 (1997) (finding that section 58.002(b) requires law enforcement agency to certify that photographs and fingerprints required to be destroyed under section 58.001 have been destroyed at the end of each calendar year); *see also* Fam. Code § 58.001(c) (requiring destruction of a child's photograph and fingerprints in certain circumstances). Accordingly, the sheriff may not withhold any of the requested information under section 58.002 of the Family Code in conjunction with section 552.101 of the Government Code. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public).

We note, however, that section 261.201(l)(3) provides that before a managing conservator or other legal representative can copy and inspect a record of a child under 261.201(k), the identity of the party who made the report must be redacted. Accordingly, to the extent the requestor is a managing conservator or other legal representative of the child victim, the identity of the reporting party, which we have marked in blue, must be withheld pursuant to section 261.201(l)(3).

Finally, we note that the information at issue includes Texas motor vehicle record information. Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.³ Gov't Code § 552.130(a)(1), (2). To the extent the requestor is a managing conservator or other legal representative of the child victim and the information at issue may not be withheld under section 261.201 of the Family Code, the sheriff must withhold the Texas motor vehicle record information we have marked in blue under section 552.130 of the Government Code.

In summary, if the requestor is not a managing conservator or other legal representative of the child victim listed in the report, the information at issue must be withheld in its entirety under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. If the requestor is a managing conservator or other legal representative, the sheriff must withhold the identity of the reporting party, which we have marked in blue, pursuant to section 261.201(l)(3) of the Family Code and the Texas motor vehicle record information we have marked in blue under section 552.130 of the Government Code, and release the remaining information.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

Ref: ID# 356906

Enc. Submitted documents

c: Requestor
(w/o enclosures)