



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2009

Ms. Jerris Penrod Mapes
Assistant City Attorney
Killeen Police Department
402 North Second Street
Killeen, Texas 76541-5298

OR2009-17518

Dear Ms. Mapes:

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# 369039 (Killeen PD # W002663).

The Killeen Police Department (the "department") received a request for information pertaining to a named individual, including specified incidents. You state that the department has released two incident reports. You claim that 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 that other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. Fam. Code § 51.02(2). Section 58.007 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 Subchapters B, D, and E.

Id. § 58.007(c). After reviewing the information related to incident report number 06-005965, we find it involves juvenile delinquent conduct that occurred after September 1, 1997. *Id.* § 51.03(a) (defining "delinquent conduct"). It does not appear any of the exceptions in section 58.007 apply; therefore, this information is confidential pursuant to section 58.007(c) of the Family Code. Accordingly, we agree the department must withhold incident report number 06-005965 from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) [T]he 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, audiotapes, videotapes, 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). You state that the remaining submitted information relates to allegations of child abuse. Upon review, we find that incident report numbers 00-006424 and 06-004198 were used or developed in investigations of alleged child abuse. Accordingly, this information falls within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" 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

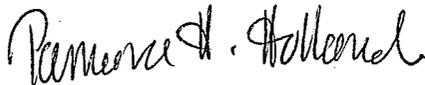
removed for general purposes). You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, incident report numbers 00-006424 and 06-004198 are confidential under section 261.201 of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code.

In summary, the department must withhold incident report number 06-005965 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must also withhold incident report numbers 00-006424 and 06-004198 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As our ruling is dispositive, we need not address your remaining argument.

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/sdk

Ref: ID# 369039

Enc. Submitted documents

c: Requestor
(w/o enclosures)