



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 11, 2010

Mr. Robert Massey
Assistant City Attorney II
City of Wichita Falls Legal Department
P.O. Box 1431
Wichita Falls, Texas 76307

OR2010-02153

Dear Mr. Massey:

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# 370118 (City ID# 309).

The Wichita Falls Police Department (the "department") received a request for incident report #05-050079 for a named individual. 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 "[i]nformation 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. The relevant language of section 58.007 of the Family Code 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, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as the term is defined in 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 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.

Fam. Code § 58.007(c), (e), (j). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007(c), a "child" is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Section 58.007 allows the review or copy of juvenile law enforcement records by a child's parent or guardian. *Id.* § 58.007(e). However, any personally identifiable information concerning another juvenile suspect, offender, victim, or witness must be redacted. *Id.* § 58.007(j)(1). Section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.007(j)(2).

The submitted report involves allegations of juvenile delinquent conduct that occurred after September 1, 1997 and this information would ordinarily be confidential pursuant to section 58.007 of the Family Code. However, it appears that the requestor may be a parent of the juvenile offender. Accordingly, if the requestor is not a parent or guardian of the juvenile offender, then the department must withhold the submitted information in its entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code.

However, if the requestor is a parent or guardian of the juvenile offender, then the information pertaining to the requestor's child may not be withheld under section 552.101 of the Government Code on that ground. *See id.* § 58.007(e). However, the personally identifiable information concerning any other juvenile suspect, offender, victim, or witness who is not the requestor's child must be redacted pursuant to section 58.007(j)(1). *Id.* § 58.007(j)(1). Therefore, the department must withhold the identifying information of the juvenile victim and witness we have marked under section 58.007(j) of the Family Code. Further, before a parent may inspect juvenile records, section 58.007(j) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we must consider the applicability of section 261.201 of the Family Code to the submitted information.

Section 552.101 also encompasses section 261.201 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 [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). You contend that the submitted information is confidential under section 261.201. We find, however, that you have failed to demonstrate that any portion of the remaining information was used or developed in an investigation of child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261). We therefore conclude that the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In summary, if the requestor is not a parent or guardian of the juvenile offender, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the requestor is a parent or guardian of the juvenile offender, then the personally identifiable information concerning the juvenile victim and witness that we have marked must be withheld pursuant to section 552.101 in conjunction with section 58.007(j)(1) of the

Family Code. The remaining information must be released to this requestor pursuant to section 58.007(e) of the Family Code.

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 370118

Enc. Submitted documents

c: Requestor
(w/o enclosures)