



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2011

Ms. Laura Russell
Attorney
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2011-09991

Dear Ms. Russell:

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# 423672.

The Texas Parks and Wildlife Department (the "TPWD") received a request for three categories of information pertaining to nineteen named game wardens. You state you do not have records concerning most of the game wardens. You also state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code, and privileged under Texas Rule of Evidence 503. We have considered your arguments 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 exception encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides in 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.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03(a) (defining “delinquent conduct”). 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). You inform us the TPWD received the report submitted as Exhibit B from the City of Allen Police Department (the “department”). *See id.* § 58.007(e) (law enforcement records and files concerning child may be inspected or copied by criminal justice agency as defined by section 411.082 of Government Code). The report pertains to a fourteen-year-old child who was arrested for allegedly committing an assault on October 23, 2003. Thus, we find the report involves a child allegedly engaged in delinquent conduct that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Accordingly, the report submitted as Exhibit B is confidential pursuant to section 58.007(c) of the Family Code, and the department must withhold it under section 552.101 of the Government Code.

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

(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.

See id. § 261.201(a). You also inform us the TPWC obtained the records submitted as Exhibit C from the department. *See id.* (information confidential under section 261.201(a))

may be disclosed for purposes consistent with Family Code and applicable federal or state law); *see also* 40 T.A.C. § 700.203(a)(3) (Texas Department of Family and Protective Services may release case record information made confidential under section 261.201(a) to local or state law enforcement officials). These records reveal they were used or developed by the department in its investigation of the alleged abuse of a seventeen-year-old child. *See* Fam. Code § 261.001(1) (defining “abuse” for purposes of chapter 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). Accordingly, we find the records are subject to section 261.201. You have not indicated the department has adopted a rule that governs the release of this information in this instance; therefore, we assume that no such regulation exists. Given that assumption, we conclude the records submitted as Exhibit C are confidential under section 261.201. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the TPWC must withhold this information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses section 411.083 of the Government Code. Section 411.083 pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information in accordance with chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may only release CHRI to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Additionally, CHRI does not include information relating to routine traffic violations. *See id.* § 411.082(2)(B). You assert the information submitted as Exhibit D is protected by section 411.083. Upon review, we conclude the TPWD must withhold the CHRI we marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, we find no portion of the remaining information in Exhibit D is CHRI for purposes of chapter 411.

The remaining information in Exhibit D includes driver's license information. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)(1)).¹ We have marked a Texas driver's license number, class designation, and expiration date contained in the remaining information in Exhibit D. Accordingly, the TPWD must withhold this information under section 552.130 of the Government Code. The remaining information in Exhibit D must be released.

You assert the e-mails submitted as Exhibit E are part of a completed internal affairs investigation that is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless the information is expressly confidential under "other law" or excepted from disclosure under section 552.108 of the Government Code. *Id.* § 552.022(a)(1). You seek to withhold the e-mails under Texas Rule of Evidence 503. The attorney-client privilege in rule 503 is "other law" for the purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001) (addressing applicability of rule 503 to information encompassed by section 552.022). Therefore, we consider your arguments under rule 503 for the e-mails. Rule 503(b)(1) provides as follows:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

- (A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;
- (B) between the lawyer and the lawyer's representative;
- (C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;
- (D) between representatives of the client or between the client and a representative of the client; or

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions.

(E) among lawyers and their representatives representing the same client.

Tex. R. Evid. 503(b)(1). A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002).

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must: (1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You state the emails are communications between a TPWD attorney and TPWD employees. You inform us these communications were made for the purpose of facilitating the rendition of professional legal services. You also state the communications were intended to be confidential and have not been disclosed to non-privileged parties. Therefore, based on your representations and our review, we conclude the TPWD may withhold the emails submitted as Exhibit E under Texas Rule of Evidence 503.

Finally, you raise section section 552.117(a)(2) of the Government Code for the records submitted as Exhibit F. This section excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.² Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov’t Code § 552.117(a)). Upon review, we find Exhibit F reveals whether a specific game warden has family members. Thus, the TPWD must withhold Exhibit F under section 552.117(a)(2) of the Government Code.

²“Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

In summary, the TPWD must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Exhibit C must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code. The TPWD may withhold Exhibit E under Texas Rule of Evidence 503. Exhibit F must be withheld under section 552.117(a)(2) of the Government Code. The marked CHRI in Exhibit D must be withheld under section 552.101 in conjunction with section 411.083 of the Government Code. Lastly, the marked driver's license information in Exhibit D must be withheld under section 552.130 of the Government Code. The remaining information in Exhibit D must be released.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eb

Ref: ID# 423672

Enc. Submitted documents

c: Requestor
(w/o enclosures)