



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2013

Ms. Lysia H. Bowling
City Attorney
City of San Angelo
72 West College Avenue
San Angelo, Texas 76903-5814

OR2013-03058

Dear Ms. Bowling:

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# 480045.

The San Angelo Police Department (the "department") received a request for a specified investigative file. We understand you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim portions of the submitted information are exempted 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 exempts 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 protected by other statutes, 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. Fam. Code § 58.007(c). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). The relevant language of 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:

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

(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.

...

(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:

...

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

Id. § 58.007(c), (e), (j)(2). Upon review, we find Exhibit B involves juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of section 58.007). Therefore, Exhibit B is within the scope of section 58.007(c). However, the requestor is a parent of the juvenile offender at issue and, as such, the department may not withhold the information at issue from this requestor pursuant to section 58.007(c). *See id.* § 58.007(e) (law enforcement records may be inspected by child's parent or guardian). However, section 58.007(j)(2) provides before a parent of a juvenile suspect may inspect the information, the department must withhold information that is excepted from required disclosure under the Act or other law. *See id.* § 58.007(j)(2). Accordingly, we will consider your arguments against disclosure for Exhibit B. We will also consider the department's arguments against disclosure of the remaining information.

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

(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 [Texas Department of Family and Protective Services] 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.

Id. § 261.201(a), (k)-(l). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *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, the submitted information is within the scope of section 261.201(a)(2).

We note that although the requestor is a parent of the alleged child victim, Exhibit F pertains to an allegation of suspected or alleged child abuse and the requestor is suspected of having committed the alleged abuse. Accordingly, Exhibit F must be withheld in its entirety from this requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See id.* § 261.201(k) (parental exception to section 261.201(a) inapplicable where parent alleged to have committed abuse or neglect at issue).

Moreover, portions of the remaining information consist of reports of alleged or suspected abuse of a child, who is not the requestor’s child, made under section 261.201(a)(1). *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261). Therefore, this information, which we have marked, is within the scope of section 261.201(a)(1) and must be withheld on that basis under section 552.101 of the Government Code.

However, the requestor is a parent of the alleged child victim, and she is not alleged to have committed the alleged or suspected abuse at issue in the remaining submitted information. Thus, the remaining information may not be withheld pursuant to section 261.201(a). *See id.* Section 261.201(l)(1), however, states the personally identifiable information of a victim or witness who is under the age of eighteen and is not a child of the parent, managing conservator, or other legal representative requesting the information must be withheld from disclosure. *Id.* § 261.201(l)(1). Further, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). You seek to withhold the information you have marked as information that identifies other child victims or witnesses and an individual who made the report of abuse. *See id.* § 261.201(l)(1), (3). Upon review, we determine the department must withhold the identifying information of child victims who are not children of the requestor and the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with subsections 261.201(l)(1) and 261.201(l)(3) of the Family Code. However, the remaining information you have marked does not consist of identifying information of child victims or witnesses nor a reporting party for purposes of section 261.201(l) of the Family Code. Accordingly, the department may not withhold the remaining information you have marked pursuant to either section 261.201(l)(1) or section 261.201(l)(3) of the Family Code. We further note section 261.201(l)(2) of the Family Code provides 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). You raise section 552.108 of the Government Code as an exception to disclosure for portions of the remaining information. Therefore, we will address the applicability of this exception to the information at issue.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information at issue relates to a concluded case that did not result in a conviction or deferred adjudication. Accordingly, we conclude the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code.

In summary, the department must withhold Exhibit F under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with subsections (1) 261.201(a)(1) of the Family Code; (2) 261.201(l)(1) of the Family Code; and (3) 261.201(l)(3) of the Family Code. The department may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The remaining information must be released to this requestor.²

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

²Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

Ref: ID# 480045

Enc. Submitted documents

c: Requestor
(w/o enclosures)

