



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2013

Deputy Danie Huffman
Public Information Officer
Parker County Sheriff's Office
129 Hogle Street
Weatherford, Texas 76086

OR2013-03129

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# 479542.

The Parker County Sheriff's Office (the "sheriff's office") received a request for all reports involving two named individuals, including three specified reports. We understand you have released some of the responsive information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which states:

(a) Except as provided by Section 261.203, the 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:

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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:

...

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

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find some of the submitted information was used or developed in investigations of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (defining “abuse,” for purposes of Fam. Code ch. 261, as including offense of indecency with a child under Penal Code § 21.11); Penal Code § 21.11(a) (defining child, for purposes of offense of indecency with a child, as person younger than 17 years of age). In this case, the requestor is the parent of the child victim named in report numbers 2012-35265 and 2008-10608. Section 261.201(k) states, however, an investigating agency may not withhold from the parent of a child who is the subject of reported abuse, information concerning the reported abuse that would otherwise be confidential under section 261.201(a), unless the parent requesting the information is alleged to have committed the abuse. *See* Fam. Code § 261.201(k). We note the requestor is alleged to have committed the abuse in report number 2012-35265. Thus, the requestor does not

have a right of access under section 261.201(k) to report number 2012-35265. *See id.* Accordingly, the sheriff's office must withhold report number 2012-35265 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² However, we note the requestor is not alleged to have committed the suspected abuse that is the subject of report number 2008-10608. Thus, the sheriff's office may not withhold the remaining information on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) 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). Therefore, we will address the applicability of sections 552.101 and 552.108 of the Government Code to report number 2008-10608.

Section 552.101 of the Government Code also encompasses 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. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Section 58.007 provides, in pertinent part, 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 Subchapters B, D, and E.

Id. § 58.007(c). Upon review, we find report number 2008-10608 involves juvenile delinquent conduct occurring after September 1, 1997, and is, therefore, subject to section 58.007. *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of section 58.007). None of the exceptions in section 58.007 appear to apply; therefore, report

²As our ruling is dispositive for this information, we need not address your remaining argument against disclosure.

number 2008-10608 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.³

We next address your arguments under section 552.108 of the Government Code for the remaining information. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in 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 concluded in a final result other than a conviction or deferred adjudication. *Id.*; see *id.* § 552.301(e)(1)(A). You inform us report number 2011-17563 relates to a case that “w[as] suspended or ha[s] been listed as inactive due to lack of leads” and that it “ha[s] not resulted in adjudication or conviction.” We note section 552.108(a)(2) is applicable only if the information at issue is related to a concluded criminal case “that did not result in conviction or deferred adjudication.” *Id.* § 552.108(a)(2). Thus, having considered your representations, we find you have not demonstrated the information at issue falls within the scope of section 552.108(a)(2). Accordingly, the sheriff’s office may not withhold the information you have marked in report number 2011-17563 under section 552.108(a)(2) of the Government Code.

In summary, the sheriff’s office must withhold report number 2012-35265 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff’s office must withhold report number 2008-10608 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The remaining information must be released to this requestor.⁴

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.

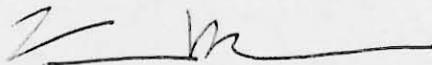
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free,

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁴We note that the requestor has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the sheriff’s office receives another request for this information from a different requestor, the sheriff’s office must again seek a ruling from this office.

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,

A handwritten signature in black ink, appearing to read 'Vanessa Burgess', with a long horizontal line extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 479542

Enc. Submitted documents

c: Requestor
(w/o enclosures)