



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2013

Ms. Rachel L. Lindsay
Counsel for the Town of Prosper
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2013-12833

Dear Ms. Lindsay:

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# 494291.

The Town of Prosper and the Prosper Police Department (collectively, the "town"), which you represent, received a request for all information concerning the first requestor's client from a specified time period; a second request for an offense report, interview, and statements involving the second requestor and her child; and a third request for information related to a specified incident involving the requestor's client. You claim the submitted information is excepted 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.

Initially, we note some of the information in Exhibit B-2 is not responsive to the second and third requests because it is not within the specific categories of information requested in those requests. This ruling does not address the public availability of that information, and the town need not release any non-responsive information to the second requestor.

Section 552.101 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 protected by other statutes, such as 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:

(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 Chapter 552, Government Code, or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)-(l). You claim, and provide an affidavit from the chief of the town's police department stating, the submitted information was used or developed in an

investigation by the department and the Texas Department of Family Protective Services of alleged abuse of children. *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). Upon review, we agree the submitted information consists of reports and records used or developed in an investigation under chapter 261 and is within the scope of section 261.201 of the Family Code. Therefore, the submitted information must be withheld from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

We note, however, the second requestor is a parent of a child victim identified in the information responsive to the second request. This requestor is not accused of having committed the abuse of her child. Accordingly, the town may not withhold from this requestor responsive information pertaining to her child that would otherwise be confidential under section 261.201(a). *See id.* § 261.201(k). We further note the third requestor is an attorney for the parents of one of the child victims identified in the information responsive to the third request. The third requestor’s clients are not accused of having committed the alleged abuse. Accordingly, the town may not withhold from this requestor responsive information pertaining to her clients’ child that would otherwise be confidential under section 261.201(a). *See id.* However, section 261.201(1)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 261.201(1)(2). Therefore, we will address the town’s arguments against disclosure of the submitted information responsive to the second and third requests.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which 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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(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). 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 at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we agree the information responsive to the second and third requests involves children 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. Thus, the information responsive to the second and third requests is confidential pursuant to section 58.007(c) of the Family Code, and the town must withhold it from the second and third requestors under section 552.101 of the Government Code.

In summary, the submitted information must be withheld in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The information responsive to the second and third requests must be withheld from the second and third requestors under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 494291

Enc. Submitted documents

c: Three Requestors
(w/o enclosures)