



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 30, 2013

Ms. Linda Pemberton  
Paralegal  
Office of the City Attorney  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540-1329

OR2013-22393

Dear Ms. Pemberton:

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# 509542 (Request No. W011744).

The Killeen Police Department (the "department") received a request for all reports pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

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 section 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state incident report 09-005137 was used or developed in an investigation of alleged or suspected child abuse. Upon review, we find this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 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).

As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine incident report 09-005137 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Therefore, the department must withhold incident report 09-005137 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 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

(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:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child[.]

Fam. Code § 58.007(c), (e), (j)(1). Section 58.007(c) is applicable to law enforcement records of juvenile delinquent conduct or a juvenile engaged in conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a),(b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007). 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 remaining reports pertain to juvenile delinquent conduct or conduct indicating a need for supervision involving the named individual that occurred after September 1, 1997. Thus, this information is subject to section 58.007(c). We note, however, the requestor is a recruiter for the United States Army and the juvenile suspect listed in the remaining reports may be a potential enlistee in the Army. Under section 58.007(e), the juvenile may inspect law enforcement records concerning him or herself. *Id.* § 58.007(e). Accordingly, if the requestor provides signed, written consent for release from the named individual, then under section 58.007(e), the requestor, as the named individual's authorized representative, has a right to inspect the remaining reports. However, any personally identifiable information concerning any other juvenile suspect, offender, victim, or witness must be redacted. *See id.* § 58.007(j)(1). Therefore, if the requestor provides signed, written consent for release from the named individual, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code and must release the remaining information at issue pursuant to section 58.007(e) of the Family Code. If the requestor does not provide signed, written consent for release from the named individual, the department must withhold the remaining reports in their entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

In summary, the department must withhold incident report 09-005137 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor does not provide signed, written consent for release from the named individual, then the department must withhold the remaining reports under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the requestor does provide signed, written consent from the named individual, then the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code and must release the remaining information 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/dls

Ref: ID#509542

Enc. Submitted documents

c: Requestor  
(w/o enclosures)