



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2014

Ms. Vanessa Burgess
Staff Attorney
Office of the General Counsel
Texas Juvenile Justice Department
P.O. Box 12757
Austin, Texas 78711

OR2014-06904

Dear Ms. Burgess:

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# 519242 (TJJD ORR Nos. 23529 and 23532).

The Texas Juvenile Justice Department (the "department") received a request for specified internal investigation summary reports and for the HR-203 summary reports for disciplinary incidents.¹ You state the department will release some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹You state the department sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides:

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

Fam. Code § 261.201(a). We note the department is authorized to conduct an investigation under chapter 261 of the Family Code.³ *See id.* § 261.401(b) (state agency that operates, licenses, certifies, or registers facility in which children are located shall make prompt, thorough investigation of report that child has been or may be abused, neglected, or exploited in facility). You state the department’s Administrative Investigations Division (“AID”) is responsible for conducting these chapter 261 investigations. Upon review, we find the AID summary reports at issue were used or developed in investigations of alleged or suspected child abuse or neglect under section 261.201(a)(2). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code 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 disabilities of minority removed for general purposes). Therefore, the AID summary reports fall within the scope of section 261.201(a) of the Family Code. We note the department has adopted rules concerning investigations of alleged abuse, neglect, or exploitation. *See id.* § 261.409 (department by rule shall adopt standards for investigation under section 261.401 of Family Code); 37 T.A.C. § 380.9333. You state the requestor does not have a right of access to the information subject to section 261.201(a)(2) of the Family Code under the department’s rules in this instance. *See* 37 T.A.C. § 380.9333. Accordingly, we conclude the department must withhold the requested AID summary reports under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.⁴

³Effective December 1, 2011, the Texas Youth Commission became known as the Texas Juvenile Justice Department. *See* Hum. Res. Code § 201.001(b).

⁴As our ruling is dispositive for the AID summary reports, we need not address your remaining argument against disclosure of that information.

We find the requested initial reports of abuse are reports of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4); *see also id.* §101.003(a). We note, however, that subsections 261.201(i) and (j) state:

(i) [n]otwithstanding Subsection (a), the [department] shall release a report of alleged or suspected abuse or neglect made under this chapter if:

(1) the report relates to a report of abuse or neglect involving a child committed to the [department] during the period that the child is committed to the [department]; and

(2) the [department] is not prohibited by [the Act], or other law from disclosing the report.

(j) The [department] shall edit any report disclosed under Subsection (i) to protect the identity of:

(1) a child who is the subject of the report of alleged or suspected abuse or neglect;

(2) the person who made the report; and

(3) any other person whose life or safety may be endangered by the disclosure.

Id. § 261.201(i), (j). You state these initial reports relate to reports of abuse or neglect involving children who were committed to the department at the time the alleged abuse occurred. Therefore, under section 261.201(i) of the Family Code, the department must generally provide the requestor with a copy of these initial reports.

However, section 261.201(i)(2) provides that a report subject to section 261.201(i) shall only be released if the department is not prohibited by the Act or other law from disclosing the report. *Id.* § 261.201(i)(2). In this regard, we note, pursuant to section 58.007(c) of the Family Code, juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential. *See id.* §§ 51.03(a)-(b), 58.007(c) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Section 58.007 provides, in relevant part, the following:

(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 the 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). 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). Upon review, we agree the initial report of abuse you have marked under section 58.007 involves alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. As such, this information constitutes a juvenile law enforcement record that is confidential under section 58.007(c) of the Family Code. It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Therefore, the department must withhold the initial report of abuse you have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

We note that section 261.201(j) of the Family Code provides a report will be released only after redactions are made to protect the identities of the children who are the subject of the investigations, the persons making the report, and any other person who may be harmed by the disclosure of the report. *See id.* § 261.201(j). Therefore, the department must release the remaining initial report of abuse pursuant to section 261.201(i) of the Family Code; however, in releasing the report, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201(j) of the Family Code.

In summary, the department must withhold the requested AID summary reports under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code. The department must withhold the initial report of abuse you have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must release the remaining initial report of abuse pursuant to section 261.201(i) of the Family Code; however, in releasing the report, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201(j) 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, 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,

A handwritten signature in black ink that reads "Britni Fabian". The signature is written in a cursive, flowing style.

Britni Fabian
Assistant Attorney General
Open Records Division

BF/tch

Ref: ID# 519242

Enc. Submitted documents

c: Requestor
(w/o enclosures)