



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 10, 2015

Mr. Renatto Garcia
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2015-04569

Dear Mr. Garcia:

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# 558783 (CCPD File No. RCav1).

The Corpus Christi Police Department (the "department") received a request for a specified police report. 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 information.

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 information protected by other statutes, such as section 58.007 of the Family Code, which provides, in pertinent 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:

...

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

Fam. Code § 58.007(c), (e), (j)(2). The submitted information consists of law enforcement records of a juvenile engaged in delinquent conduct that occurred on or after September 1, 1997. *See id.* §§ 51.02(2) (defining "child" as person who is ten years of age or older and under seventeen years of age at time of conduct at issue), .03(a) (defining "delinquent conduct" for purposes of section 58.007 of the Family Code). Thus, this information is subject to section 58.007. We note the requestor may be a parent or foster parent of the juvenile offender listed in the report. Section 58.007(e) allows a child's parent or guardian access to the child's law enforcement records. *See id.* § 58.007(e). Section 51.02(4) of the Family Code defines a guardian as "the person, who, under court order, is the guardian of the person of the child or public or private agency with whom the child has been placed by the court." *Id.* § 51.02(4). We understand foster children are generally under the conservatorship of the Texas Department of Family and Protective Services ("DFPS"), and the courts may order certain parties, such as foster parents, to provide certain care and to have certain responsibilities. *See, e.g., id.* §§ 161.207-.208, 263.001, 264.122, 266.001, 266.004. If the requestor is a foster parent of the child at issue, then her rights as a guardian are to be determined by order of the court and

approved by DFPS. Accordingly, if the department determines the requestor is not the parent or guardian of the child for purposes of section 58.007, then the submitted information is confidential under section 58.007(c), and the department must withhold the submitted information in its entirety under section 552.101 of the Government Code. However, if the department determines the requestor is the parent or guardian of the child for purposes of section 58.007, then the requestor has a right to inspect information under section 58.007(e). *Id.* § 58.007(e). In that instance, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, we will consider your remaining arguments under section 552.101 of the Government Code.

Section 552.101 of the Government Code also 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 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.

Id. § 261.201(a). The submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation of alleged or suspected child abuse. *See id.* §§ 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. You do not indicate the department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the submitted information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, if the requestor is a parent or guardian of the juvenile offender, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

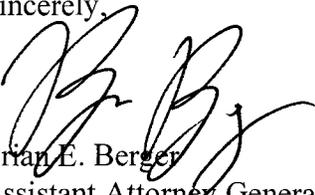
In summary, if the requestor is not a parent or guardian of the juvenile offender, then the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if

the requestor is a parent or guardian of the juvenile offender, then the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) 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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 558783

Enc. Submitted documents

c: Requestor
(w/o enclosures)