



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 6, 2015

Ms. Josi Diaz
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2015-16196

Dear Ms. Diaz:

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# 574426 (ORR# 2015-07391).

The Dallas Police Department (the "department") received a request for information pertaining to two named individuals. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹Although you do not specifically raise section 552.101 in your briefing to this office, we understand you to raise this exception based on your arguments. Furthermore, you acknowledge, and we agree, the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information, notwithstanding the department's violation of section 552.301 in requesting this decision.

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 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 information protected by other statutes, such as 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 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 the submitted information was used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of chapter 261 of the Family

Code), 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to section 261.201 of the Family Code. However, we note the requestor has provided a signed authorization to release information from one of the individuals named in the request, who is the child victim listed in the information at issue. We also note the child victim is now at least eighteen years of age, and the requestor is not alleged to have committed the alleged abuse. Thus, pursuant to section 261.201(k), the department may not withhold the submitted information from this requestor 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 consider your arguments against disclosure for the submitted information.

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(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Section 58.007 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.

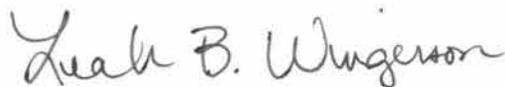
Id. § 58.007(c). Upon review, we find the submitted information involves juvenile delinquent conduct occurring after September 1, 1997, and is, therefore, subject to section 58.007. *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of section 58.007). None of the exceptions in section 58.007 appear to apply. Therefore, the

submitted information 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

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 574426

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note, because the information at issue does not contain criminal history record information ("CHRI") of the individuals named in the request for information, we do not address whether the requestor, who has been appointed by the Dallas County Family District Courts to complete a court-ordered social study involving the individuals named in the request, has a right of access to CHRI under sections 411.087 and 411.1285(a) of the Government Code. *See* Gov't Code §§ 411.087(a)(2), .1285(a). Additionally, because our ruling is dispositive, we need not address your remaining argument against disclosure.