



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 28, 2016

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2016-02150

Dear Mr. Dempsey:

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# 595958 (GCA 15-0774).

The Garland Police Department (the "department") received a request for information pertaining to three named individuals in relation to three specified incidents. 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.

Initially, we note that you have submitted only information pertaining to two of the specified incidents. To the extent any additional responsive information existed on the date the department received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 58.007 of the Family Code. Section 58.007 of the Family Code provides, in 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.

Fam. Code § 58.007(c), (e); *see id.* § 51.03(a) (defining "delinquent conduct" for purposes of title 3 of Family Code). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining "child" for purposes of title 3 of Family Code). We find call for service report number 2015E057071 involves a juvenile offender, so as to fall within the scope of section 58.007(c). In this instance, however, the requestor is the parent of the juvenile offender. As such, the requestor has a right to inspect juvenile law enforcement records concerning this juvenile pursuant to section 58.007(e) of the Family Code. *See id.* § 58.007(e). Therefore, the department must release the call for service report to the requestor pursuant to section 58.007(e) of the Family Code.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 261.201 of the Family Code. Section 261.201 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, 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.

Fam. Code § 261.201(a), (k). Upon review, we find incident report number 2015R023817 consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed as a result of an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code). Accordingly, we find the incident report is subject to chapter 261 of the Family Code. We note the requestor is a parent of the child victim listed in the submitted information, but the requestor is alleged to have committed the alleged abuse or neglect. Thus, the requestor does not have a right of access to the incident report under section 261.201(k). *Id.* § 261.201(k). Therefore, the department must withhold the incident report under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code.

In summary, the department must release call for service report number 2015E057071 pursuant to section 58.007(e) of the Family Code.¹ The department must withhold incident

¹We note the requestor has a special right of access the information being released in this instance. *See* Fam. Code § 58.007(e). Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

report number 2015R023817 under section 552.101 of the Government Code in conjunction with section 261.201(k) 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 595958

Enc. Submitted documents

c: Requestor
(w/o enclosures)