



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 11, 2016

Ms. Victoria D. Honey
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-08066

Dear Ms. Honey:

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# 604994 (Fort Worth Request Nos. W048859 and W049359).

The City of Fort Worth (the "city") received two requests from the same requestor for information pertaining to a specified report. You claim the requested 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, you inform us the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-18714 (2015). In Open Records Letter No. 2015-18714, we determined the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. In this instance, however, the requestor is a parent of the child victim listed in the information and is not suspected of committing the alleged abuse. Accordingly, this requestor may have a special right of access to information pertaining to the child victim at issue under section 261.201(k) of the Family Code. Fam. Code § 261.201 (k). Thus, we find the circumstances have changed in regard to this information and the city may not rely on Open Records Letter No. 2015-18714 as a previous determination in this instance. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as

was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Accordingly, we will consider your arguments against disclosure of 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. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

(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 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.

(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; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). You state the submitted report was used or developed in an investigation of alleged or suspected child abuse or neglect. *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 this section 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). Based on your representations and our review, we find the submitted report is generally confidential under section 261.201 of the Family Code. However, we note, and you acknowledge, the requestor is the parent of the child victim listed in the report, and the parent is not alleged to have committed the suspected abuse or neglect. In this instance, the submitted information may not be withheld from this requestor under section 261.201(a). *Id.* § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). You seek to withhold the identifying information of the individual who made the report of abuse or neglect. We note, however, the submitted information does not contain any identifying information of the individual who made the report of abuse or neglect for purposes of section 261.201. Accordingly, the city may not withhold any of the submitted information under section 552.101 on the basis of section 261.201(l)(3) of the Family Code. We also note section 261.201(l)(2) states 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).

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. The relevant language of section 58.007 reads:

(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.

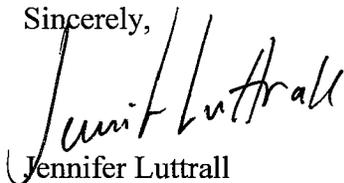
Id. § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential

under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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 find the submitted information involves delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). However, we are unable to determine the age of the suspect listed in the information at issue. Thus, we must rule conditionally. If the suspect at issue was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then, as it does not appear any of the exceptions in section 58.007 apply, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Conversely, if the suspect at issue was under ten years of age or was seventeen years of age or older at the time of the conduct, then the information does not involve juvenile conduct for purposes of section 58.007(c) of the Family Code, and no portion of the submitted information may be withheld under section 552.101 of the Government Code on that basis. In that instance, the city must release submitted information to this requestor.¹

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

¹Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the city must again seek a decision from this office if it receives a request for this information from a different requestor.

Ref: ID# 604994

Enc. Submitted documents

c: Requestor
(w/o enclosures)