



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2015

Mr. James Kopp
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2015-13224

Dear Mr. Kopp:

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# 569940 (COSA File No. W074740).

The City of San Antonio (the "city") received a request for two specified incident reports, as well as the audio associated with an additional incident.¹ 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.

We note that some of the submitted information is not responsive to the present request. The requestor seeks two specified incident reports and the audio associated with an additional incident. Some of the information you have submitted consists of an incident report the requestor has not requested. Thus, this information, which we have marked, is not responsive to the request. This ruling does not address the public availability of that information, and the city need not release any non-responsive 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

¹We note the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

Code § 552.101. Section 552.101 encompasses section 58.007(c) of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Fam. Code § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). The relevant part of section 58.007(c) reads as follows:

(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). 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). We have reviewed the submitted information and find the information at issue does not identify a juvenile suspect or offender for purposes of section 58.007. Accordingly, we find that you have not demonstrated the applicability of section 58.007(c) of the Family Code. Thus, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses 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 [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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(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.

Id. § 261.201(a), (k), (l). You state, and we agree, the submitted information was used or developed in investigations of alleged or suspected child abuse or neglect; thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). We note although the requestor is the mother of the victims in the incident that occurred on March 27, 2015, she is alleged to have committed the abuse or neglect at issue in that incident; thus, the requestor does not have a right of access to the audio recording at issue under section 261.201(k). *See id.* § 261.201(k). As you do not indicate the city has adopted a rule that governs the release of the type of information at issue, we assume no such regulation exists. Given that assumption, and based

on our review, we determine the audio recording we have indicated is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Therefore, the city must withhold the audio recording we have indicated under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

However, the requestor is the parent of the child victim in report number 14000705 and report number 15063531, and she is not alleged to have committed the abuse or neglect in those incidents. Thus, the requestor has a right of access to the information at issue pursuant to section 261.201(k). *See* Fam. Code § 261.201(k). Therefore, the requestor has a right of access to report number 14000705 and report number 15063531 and such information may not be withheld from the requestor under section 552.101 on the basis of section 261.201 of the Family Code. *Id.* However, before the city provides any of this information to the requestor, the city must redact any personally identifying information about any other child victims or witnesses. *See id.* § 261.201(l)(1). Further, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Accordingly, the city must withhold the identifying information of the juvenile witness we have marked under section 261.201(l)(1) of the Family Code, and the identifying information of the reporting party we have marked under section 261.201(l)(3) of the Family Code in conjunction with section 552.101 of the Government Code.


In summary, the city must withhold the audio recording we have indicated under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must withhold the identifying information of the juvenile witness we have marked under section 261.201(l)(1) of the Family Code, and the identifying information of the reporting party we have marked under section 261.201(l)(3) of the Family Code in conjunction with section 552.101 of the Government Code. The remaining information must be released to this requestor.²

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.

²We note the requestor has a special right of access to the information being released in this instance. *See* Fam. Code § 261.201(k); *see also* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that party's representative, solely on grounds that information is considered confidential by privacy principles). Accordingly, if the city receives another request for this information from a different requestor, then the city should again seek a ruling from this office. We also note the information being released includes social security numbers. Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b); *see also* Fam. Code § 261.201(l)(2).

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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 569940

Enc. Submitted documents

c: Requestor
(w/o enclosures)