



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2015

Mr. Nicholas Toulet
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2015-14746

Dear Mr. Toulet:

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# 578203 (Midland ORR# 16912).

The City of Midland (the "city") received a request for information pertaining to three specified reports and any reports pertaining to the requestor's child. 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 public 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. The relevant language of section 58.007 of the Family Code 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.

...

(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). 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), a "child" is 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). Section 58.007 allows the review or copy of juvenile law enforcement records by a child's parent or guardian. *Id.* § 58.007(e). Section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.007(j)(2).

Exhibit B pertains to juvenile delinquent conduct occurring after September 1, 1997; therefore, Exhibit B is subject to section 58.007. However, the requestor is the parent of the juvenile offender. Accordingly, information pertaining to the requestor's child may not be withheld under section 552.101 of the Government Code on that ground. *See id.* § 58.007(e). Therefore, Exhibit B may not be withheld under section 58.007(c).

Section 552.101 of the Government Code also 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 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.

Fam. Code § 261.201(a), (k). Report number 141219066 and the information submitted as Exhibits C and D were used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001 (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). Upon review, we find report number 141219066 and Exhibits C and D are generally confidential under section 261.201 of the Family Code.

In this instance, the requestor is a parent of the child victims listed Exhibits C and D. However, the information at issue reflects the requestor is also alleged to have committed the suspected abuse or neglect at issue in Exhibits C and D. Accordingly, this requestor does not have a right of access Exhibits C and D pursuant to section 261.201(k). *See id.* § 261.201(k). Thus, we conclude Exhibits C and D must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

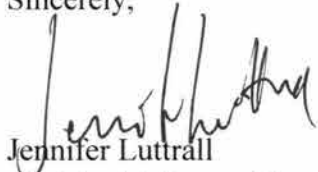
We note, however, the requestor is the parent of the child victim listed in report number 141219066, and the parent is not alleged to have committed the suspected abuse or neglect. In this instance, report number 141219066 may not be withheld from this requestor under section 261.201(a). *Id.* § 261.201(k).

The city must withhold Exhibits C and D under section 261.201(a) of the Government Code. The remaining information must be released 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/bhf

Ref: ID# 578203

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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.