



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2016

Ms. Lori J. Kaspar
County Attorney
Hood County
1200 West Pearl Street
Granbury, Texas 76048

OR2016-28311

Dear Ms. Kaspar:

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# 638979.

The Hood County Sheriff's Office (the "sheriff's office") received a request for a specified incident report. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses information protected by other statutes such as section 58.005 of the Family Code, which provides that "[r]ecords and files concerning a child, including personally identifiable information, and information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to [certain listed individuals]." Fam. Code § 58.005(a). You contend the submitted information is confidential under section 58.005. You do not inform us, however, nor does the information at issue reflect, that it was "obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court." *Id.* Therefore, we conclude the

sheriff's office may not withhold the information at issue under section 552.101 of the Government Code on the basis of section 58.005 of the Family Code.

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.

Id. § 261.201(a). The submitted information was used or developed in an investigation by the sheriff's office of suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.2001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Thus, the submitted information is within the scope of section 261.201(a). Accordingly, we find the submitted information is generally confidential under section 261.201(a). However, section 261.201(a) provides information encompassed by that section may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." *Id.* § 261.201(a). We note the submitted information is also subject to section 58.007 of the Family Code, which constitutes applicable state law for purposes of section 261.201(a). Accordingly, we will address the applicability of section 58.007 to 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. The relevant language of section 58.007 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.

Id. § 58.007(c), (e). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of 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 reported conduct. *See id.* § 51.02(2). Upon review, we find the submitted information involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Therefore, the submitted information is generally confidential pursuant to section 58.007(c) of the Family Code.

In this instance, the requestor is a representative of the Parole Division of the Texas Department of Criminal Justice ("TDCJ"). Section 58.007(e) gives a "criminal justice agency as . . . defined by Section 411.082, Government Code" a right of access to juvenile law enforcement records. *Id.* § 58.007(e). Section 411.082 of the Government Code defines a "criminal justice agency" as including "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]" Gov't Code § 411.082(3)(A). "Administration of criminal justice" has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines "administration of criminal justice" as the "performance of any of the following activities: detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of [CHRI]." Crim. Proc. Code art. 60.01(1).

We understand TDCJ is a criminal justice agency as defined by section 411.082. *See id.* Therefore, the requestor generally has a right of access to the submitted information under section 58.007(e) of the Family Code, and this information may not be withheld under section 552.101 in conjunction with section 58.007(c). As noted above, the submitted

information is also subject to section 261.201(a) of the Family Code. Records subject to section 261.201 may be disclosed under applicable state law and for purposes consistent with the Family Code. *See* Fam. Code § 261.201(a). Section 58.007(e) is applicable state law allowing disclosure to TDCJ. However, the sheriff's office must determine whether releasing the submitted information to TDCJ is consistent with the Family Code. If the sheriff's office determines TDCJ does not intend to use the submitted information for purposes consistent with the Family Code, then the sheriff's office must withhold this information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See id.* § 261.201(b)-(g), (k), (l) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute). If the sheriff's office determines TDCJ intends to use the submitted information for purposes consistent with the Family Code, then the requestor has a right of access to this information pursuant to section 58.007(e) of the Family Code, and the sheriff's office may not withhold this information from the requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We note, however, the sheriff's office also asserts portions of the submitted information are excepted from disclosure under section 58.004 of the Family Code. Section 552.101 of the Government Code also encompasses section 58.004 of the Family Code, which provides as follows:

(a) Notwithstanding any other law, before disclosing any juvenile court record or file of a child as authorized by this chapter or other law, the custodian of the record or file must redact any personally identifiable information about a victim of the child's delinquent conduct or conduct indicating a need for supervision who was under 18 years of age on the date the conduct occurred.

(b) This section does not apply to information that is:

- (1) necessary for an agency to provide services to the victim;
- (2) necessary for law enforcement purposes; or
- (3) shared within statewide juvenile information and case management system established under Subchapter E.

Fam. Code § 58.004(a), (b). You state portions of the submitted information are confidential under section 58.004(a). However, section 58.004 does not apply to information that is necessary for law enforcement purposes. *Id.* § 58.004(b)(2). As previously noted, the requestor is a representative of TDCJ, and we note TDCJ is using the information for law enforcement purposes. Therefore, we find section 58.004 is not applicable to the submitted information, and the sheriff's office may not withhold the submitted information under

section 552.101 of the Government Code in conjunction with section 58.004 of the Family Code.

In summary, if the sheriff's office determines TDCJ does not intend to use the submitted information for purposes consistent with the Family Code, then the sheriff's office must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the sheriff's office determines TDCJ intends to use the submitted information for purposes consistent with the Family Code, then the requestor has a right of access to this information in its entirety pursuant to section 58.007(e) of the Family Code, and the sheriff's office must release this information to the requestor.

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/akg

Ref: ID# 638979

Enc. Submitted documents

c: Requestor
(w/o enclosures)