



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 7, 2017

Mr. Adam Anderson
Assistant County Attorney
Montgomery County
501 North Thompson, Suite 300
Conroe, Texas 77301

OR2017-02766

Dear Mr. Anderson:

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# 644821 (ORR Files 16PIA618 & 16PIA619).

The Montgomery County Constable's Office (the "constable's office") received two requests from different requestors for information related to a specified incident involving named individuals. 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 encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which 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 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 . . . 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[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse conducted by the constable's office. *See 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), 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code). As you have not indicated the constable's office has adopted a rule governing the release of this type of information, we assume no such regulation exists. Given that assumption, the submitted information is confidential under section 261.201 of the Family Code. Therefore, the constable's office must withhold the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, we note the second requestor is a parent of the child victim listed in the information at issue and is not alleged to have committed the alleged or suspected abuse or neglect. *See id.* § 261.201(k). Thus, pursuant to section 261.201(k) of the Family Code, the information at issue may not be withheld from the second requestor on the basis of section 261.201(a). *Id.* Nevertheless, pursuant to section 261.201(l)(2), the constable's office must redact any information that is

otherwise excepted from required disclosure under the Act. *See id.* § 261.201(1)(2). Thus, we will consider the applicability of other exceptions to disclosure of the submitted information.

Section 552.101 of the Government Code also encompasses information made confidential by section 58.007(c) 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(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). The submitted information pertains to a juvenile suspect who was ten years of age or older and under seventeen years of age at the time of the incident that is the subject of the submitted report. Further, the submitted information involves 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 Fam. Code § 58.007). It does not appear that any of the exceptions in section 58.007 apply; therefore, the submitted information is confidential pursuant to section 58.007(c) of the Family Code. Accordingly, the constable’s office must withhold the submitted information from the second requestor under section 552.101 of the Government Code on that basis.

In summary, the constable’s office must withhold the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The constable’s office must withhold the submitted information from the second requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) 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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/sb

Ref: ID# 644821

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)