

Juvenile Law Case Summaries

By
Robert O. Dawson
Bryant Smith Chair in Law
University of Texas School of Law

[2001 Case Summaries](#) [2000 Case Summaries](#) [1999 Case Summaries](#)

Child Protective Services is not entitled to see a juvenile law enforcement incident report [OR2001-4788] (01-4-41).

On October 22, 2001, the Attorney General in a Public Information Act opinion ruled that Child Protective Services is not entitled to see a law enforcement incident report concerning a juvenile.

01-4-41. Attorney General Opinion No. OR2001-4788, 2001 WL 1265360 (10/22/01) [Texas Juvenile Law (5th Edition 2000)].

Ms. Elaine S. Hengen Assistant City Attorney City of El Paso 2 Civic Center Plaza El Paso, Texas 79901-1196

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 153685.

The City of El Paso (the "city") received requests for law enforcement records from two case workers for the El Paso Office for Child Protective Services. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. 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 Subchapter B. . . . (e) Law enforcement records and files concerning a child may be inspected by a juvenile justice agency as that term is defined by Section 58.101 and a criminal justice agency as that term is defined by Section 411.082, Government Code.

One of the reports at issue, Report No. 01-209092, involves juvenile conduct that occurred after September 1, 1997. Thus, section 58.007(c) prohibits the public disclosure of the report. The question becomes whether El Paso Child Protective Services is a "juvenile justice agency" entitled to inspect the report under section 58.007(e).

Section 58.101 of the Family Code states that "criminal justice agency" has the meaning assigned by section 411.082 of the Government Code. Section 411.082(3) of the Government Code states that

(3) "Criminal justice agency" means: (A) 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; or (B) a nongovernmental railroad or campus police department that has obtained an originating agency identifier from the Federal Bureau of Investigation.

We have no information to allow us to conclude that the El Paso Child Protective Service is a criminal justice agency for purposes of section 411.082. Furthermore, this does not present a situation in which a transfer of confidential information is permitted based on the interagency transfer doctrine. An interagency transfer of confidential information is prohibited where, as here, a confidentiality statute enumerates specific entities to which release of confidential information is authorized and the requesting agency is not among the statute's enumerated entities. See Attorney General Opinion DM- 353 at 4 n. 6 (1995); Open Records Decision No. 661 at 3 (1999). Accordingly, Report No. 01-209092 is confidential pursuant to section 58.007(c) of the Family Code and the city must withhold the report from the requestor under section 552.101 of the Government Code.

Section 58.007 does not apply to the other report, Report No. 01- 186195, because that report does not concern a "child" as defined in section 51.02(2) of the Family Code. However, Report No. 01-186195 is subject to chapter 261 of the Family Code. See Family Code § 101.003 (defining "child" for purposes of title 5 of Family Code). Section 261.201 of the Family Code generally makes confidential information reports and other materials concerning an investigation under chapter 261 of an allegation of child abuse or neglect. However, as the requestor here is a representative of Child Protective Services, we do not believe the confidentiality of section 261.201 applies. See Family Code § 261.105(a) (requiring local or state law enforcement agency to refer chapter 261 reports to the Department of Protective and Regulatory Services). The city must therefore release the report to the requestor.

In summary, the city must withhold from the requestor Report No. 01-209092 based on section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must release to the requestor Report No. 01-186195.

[Balance of letter dealing with disclosure and appeal procedures is omitted.]

Sincerely,

Kay Hastings Assistant Attorney General Open Records Division

[2001 Case Summaries](#)

[2000 Case Summaries](#)

[1999 Case Summaries](#)