



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 7, 2016

Mr. Nicholas Toulet
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2016-20237

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# 626043 (Midland ID# 19937).

The Midland Police Department (the "department") received a request for specified records pertaining to a named individual. You state you have released some information. 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.

Initially, we understand the requestor to assert she has a right of access to the requested information under Supreme Court of Arizona Rule 34(d)(6). This rule authorizes the requestor to receive criminal history record information regarding any applicant for admission to practice law in Arizona for licensing purposes. *See* Ariz. Sup. Ct. R. 34(d)(6). The Act generally does not incorporate the confidentiality or access provisions of other states' statutes, regulations, and judicial rules because those authorities only govern the disclosure of information held by those states. *But see* Open Records Decision No. 561 at 6-7 (1990) (noting that if agency of federal government shares its information with Texas governmental entity, Texas entity must withhold information that federal agency determined to be confidential under federal law). The submitted information is maintained by the department, which is subject to the state laws of Texas. Thus, although Rule 34(d)(6) authorizes the requestor to receive criminal history information, this statute does not grant

the requestor access to records of a Texas governmental body that are excepted from disclosure under the Act. Accordingly, we will address the department's argument against disclosure of 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. This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which 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.

Fam. Code § 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 information in Exhibit B involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, the department must withhold Exhibit B 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, which provides, in relevant part, 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 Juvenile Justice Department, 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). Exhibit C consists of an investigation by the department of alleged or suspected child abuse or neglect and falls within the scope of section 261.201 of the Family Code. *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), (4) (defining “abuse” and “neglect”

for purposes of chapter 261 of the Family Code). However, in this instance, the requestor is the authorized representative of a child victim listed in the information, who is now an adult. Thus, pursuant to section 261.201(k), the department may not withhold Exhibit C from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). However, section 261.201(l)(1) states any personally identifiable information about a victim or witness who is under 18 years of age and is not the child of the parent, managing conservator, or other legal representative requesting the information shall be withheld from disclosure. *Id.* § 261.201(l)(1). Accordingly, we find the department must withhold the personally identifiable information about a victim or witness who is under 18 years of age and is not the individual named in the request, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. Further, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Accordingly, the department must withhold the reporting party's identity we have marked under section 552.101 in conjunction with section 261.201(l)(3). *Id.* In addition, section 261.201(l)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider whether the report at issue is otherwise excepted from disclosure.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. We note the purpose of section 552.130 is to protect personal privacy interests. Thus, as the authorized representative of the named individual, the requestor has a right of access to the named individual's motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, the department may not withhold the named individual's motor vehicle record information from the requestor under section 552.130 of the Government Code. However, the department must withhold the motor vehicle record information we have indicated in the remaining information under section 552.130 of the Government Code.

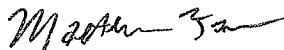
In summary, the department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 261.201(l)(1) and 261.201(l)(3) of the Family Code. The department must withhold the motor vehicle record information we have

indicated in the remaining information under section 552.130 of the Government Code. The department must release the remaining information.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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/dls

Ref: ID# 626043

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the requestor has a special right of access to some of the information being released in this instance. See Fam. Code § 261.201(k); Gov't Code § 552.023(a). We further note that the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental 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. *Id.* § 552.147(b). The requestor has a right, however, to the named individual's social security number. See generally *id.* § 552.023(b). Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.