



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 21, 2016

Ms. Jessika J. Velasquez  
Counsel for the City of Watauga  
Evans, Daniel, Moore, Evans & Biggs  
115 West Second Street, Suite 202  
Fort Worth, Texas 76102

OR2015-25895

Dear Ms. Velasquez:

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# 634944 (ORR# 13-433).

The Watauga Police Department (the "department"), which you represent, received one request from two requestors for all police reports pertaining to a specified address during a certain time period. You state you have released some information to the requestor. You claim some of 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. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides, in pertinent part:

(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.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under [the Act], or other law.

Fam. Code § 58.007(c), (e), (j). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 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 conduct at issue. *See id.* § 51.02(2). Upon review, we find incident report number 16W12455 does not identify a juvenile suspect or offender for the purposes of section 58.007. Accordingly, we find the department has not demonstrated the applicability of section 58.007(c) to this information; thus, the department may not withhold this information under section 552.101 on this basis. However, Exhibit C and the remaining information within Exhibit D involve children engaged in delinquent conduct or conduct indicating a need for supervision that occurred

after September 1, 1997. As such, this information is subject to section 58.007(c). You state, and the information at issue reflects, the requestors are the parents of two of the juvenile offenders. Therefore, in accordance with section 58.007(e), the department may not use section 58.007(c) to withhold this information from these requestors. *See id.* § 58.007(e).

However, section 58.007(j)(1) provides that any identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor's child must be redacted. *Id.* § 58.007(j)(1). Thus, we find, with the exception of the information we have marked for release, the department must withhold the identifying information of the juvenile offender and witness you have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. Upon review, we find the remaining information you have marked does not consist of identifiable information about a juvenile suspect, offender, victim, or witness who is not the child of the requestors, and the department may not withhold this information, which we have marked for release, under section 552.101 in conjunction with section 58.007(j)(1). Section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or law must be redacted. *Id.* § 58.007(j)(2). Thus, we will address your remaining argument for the remaining information.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in relevant part, the following:

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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.

*Id.* § 261.201(a), (k). Exhibit B and Exhibit C pertain to investigations 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). We note the requestors are the parents of the child victim listed in incident report number 16W25031, but one of the requestors is alleged to have committed the alleged abuse or neglect. Thus, the requestors do not have a right of access to report number 16W25031 under section 261.201(k). *See id.* § 261.201(k). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine the department must withhold incident report number 16W25031 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, upon review, incident report number 16W25033 and Exhibit C reflect the requestors are the parents of the child victim listed in the information at issue and are not alleged to have committed the suspected abuse or neglect. *See id.* Thus, the information at issue may not be withheld from these requestors on the basis of section 261.201(a). *Id.*

Section 552.1175 of the Government Code may be applicable to some of the remaining information.<sup>1</sup> Section 552.1175 applies to information pertaining to peace officers that the department does not hold in an employment capacity and provides, in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Section 552.1175 is also applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Upon review, we determine the department must withhold the cellular telephone number we have marked under section 552.1175 if the individual to whom the information pertains is still a licensed peace officer and he elects to restrict access to his information in accordance with section 552.1175(b). However, the department may withhold this information only if the cellular telephone service is not paid for with government funds. If the individual is no longer a licensed peace officer or no election is made, the department may not withhold the individual's information under section 552.1175.

In summary, with the exception of the information we have marked for release, the department must withhold the identifying information of the juvenile offender and witness you have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The department must withhold incident report number 16W25031 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the cellular telephone number we have marked under section 552.1175 of the Government Code if the individual to whom the information pertains is still a licensed peace officer, he elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, and the cellular telephone service is not paid for with government funds. The department must release the remaining information.<sup>2</sup>

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<sup>2</sup>We note the requestors have a right of access beyond that of the general public to some of the information being released. *See* Fam. Code §§ 58.007(e), 261.201(k); Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself).

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](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,

A handwritten signature in black ink, appearing to read "Cole Hutchison". The signature is written in a cursive, flowing style.

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

Ref: ID# 634944

Enc. Submitted documents

c: Requestor  
(w/o enclosures)