



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 11, 2017

Mr. Guillermo Trevino
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2017-00792

Dear Mr. McCracken:

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# 641079 (PIR No. W056026).

The City of Fort Worth (the "city") received a request for (1) five categories of information for cases in which a named city police officer was the lead investigator or participated in the investigation, (2) information to specified types of training classes attended by the named city police officer, (3) training materials and instruction manuals provided to a specified type of employee during a specified time period, and (4) statistical information pertaining to a specified type of case. The city states it has released information relating to training. The city states it does not have information responsive to a portion of the request.¹ The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.²

Initially, we note the only information responsive to the instant request in the submitted case information is the five specified categories and the requested statistical information. Any additional information relating to the cases at issue, including the locations of the offenses

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

and identifying information of complainants, suspects, or victims, is not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.³

Section 552.101 of the Government Code exempts from public 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, including section 261.201 of the Family Code. Section 261.201 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.

Fam. Code § 261.201(a). The city asserts some of the submitted information pertains to reports of child abuse or neglect investigations by the city’s police department. *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 submitted information pertaining to child custody disputes do not consist of investigations conducted under chapter 261 and the city may not withhold such information under section 552.101 in conjunction with section 261.201. The city has not indicated it has adopted a rule that governs the release of the submitted responsive information that is subject to chapter 261. Therefore, we assume that no such regulation exists. We note we are unable to determine the age of the victims in some of the information at issue. Thus, we must rule conditionally. If the information at issue pertains to incidents involving a victim of alleged or suspected abuse or neglect who was under the age of eighteen at the time of the incident at issue, then the information is subject to section 261.201 of the Family Code. In that case, the city must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.⁴ If, however, the victims in the information at issue

³As we are able to make this determination, we need not address your arguments against disclosure of this information.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

were eighteen years of age or older at the time of the incidents, section 261.201 is not applicable to this information. In that instance, we conclude the city may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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 subject to section 58.007 of the Family Code, which provides, in relevant 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.

Id. § 58.007(c). 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). Some of the remaining information involves allegations of delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. However, we are unable to determine the ages of the alleged offenders. Accordingly, we must rule conditionally. To the extent the incidents at issue involve offenders who were ten years of age or older and under seventeen years of age at the time of the conduct at issue, such information is confidential under section 58.007(c), and the city must withhold it under section 552.101.⁵ However, to the extent the offenders at issue were not ten years of age or older and under seventeen years of age at the time of the conduct at issue, the incidents at issue are not confidential pursuant to section 58.007(c) and the city may not withhold such information under section 552.101 on that basis.

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

In summary, to the extent the information at issue pertains to incidents involving a victim of alleged or suspected child abuse or neglect who was a under the age of eighteen at the time of the incident at issue, the city must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent the incidents at issue pertain to offenders who were ten years of age or older and under seventeen years of age at the time of the conduct at issue, such information is confidential under section 58.007(c) of the Family Code and the city must withhold it under section 552.101 of the Government Code. The city must release the remaining responsive information.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 641079

Enc. Submitted documents

c: Requestor
(w/o enclosures)