



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 2, 2017

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469

OR2017-09351

Dear Ms. Aguilar:

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# 655699 (CCPD File No. ARam1).

The Corpus Christi Police Department (the "department") received a request for a specified police report. We note the department is authorized to redact dates of birth pursuant to Open Records Letter No. 2016-00831 (2016).¹ 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.

¹Open Records Letter No. 2016-00831 is a previous determination authorizing the department to withhold the dates of birth of living individuals under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

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 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 [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.

Fam. Code § 261.201(a). Upon review, we find some of the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect by the department; thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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). As the department does not indicate it 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 information we have marked is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, we find the department has failed to demonstrate the remaining information involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 or the information was used or developed in an investigation of alleged or suspected child abuse or neglect. Therefore, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.101 of the Government Code also encompasses chapter 61 of the Code of Criminal Procedure, which addresses intelligence information pertaining to street gangs. Article 61.02(a) provides, in part, “a criminal justice agency . . . shall compile criminal information into an intelligence database for the purpose of investigating or prosecuting the

criminal activities of criminal combinations or criminal street gangs.” Crim. Proc. Code art. 61.02(a). Article 61.03(a) reads as follows:

A criminal justice agency may release on request information maintained under this chapter to:

- (1) another criminal justice agency;
- (2) a court; or
- (3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39.

Id. art. 61.03(a). Further, article 61.05 of the Code of Criminal Procedure provides release of this information to a person who is not entitled to the information is a Class A misdemeanor. *See id.* art. 61.05(b). The department represents the information it has marked under article 61.03 was obtained from an intelligence database for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs. We understand the requestor is not entitled to obtain the information under article 61.03. Therefore, we conclude the department must withhold the information it has marked under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the information it has marked under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure. The department must release the remaining information.²

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/>

²We note, because some of the information at issue is confidential with respect to the general public, if the department receives another request for this information from a different requestor, then the department should again seek a ruling from this office. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that party’s representative, solely on grounds that information is considered confidential by privacy principles).

[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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/sb

Ref: ID# 655699

Enc. Submitted documents

c: Requestor
(w/o enclosures)