



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 31, 2017

Ms. Dawn Roberts
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2017-19913

Dear Ms. Roberts:

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# 674631 (ORR# 39734).

The Arlington Police Department (the "department") received a request for specified incident reports involving the requestor's child. The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the department claims 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 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 Chapter 552, Government Code, 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:

...

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

Fam. Code § 261.201(a), (k), (l)(2). Report numbers 15-26931, 16-22599, and 2017-00800584 were used or developed in investigations of alleged or suspected child abuse or neglect by the 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). Accordingly, we find this information is subject to chapter 261 of the Family Code. We note the requestor is a parent of the child victim listed in the information, and is not alleged to have committed the abuse or neglect. Thus, pursuant to section 261.201(k), the information at issue may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider the department’s remaining arguments against disclosure of report numbers 15-26931, 16-22599, and 2017-00800584, as well as the remaining information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. 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 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 Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). 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). Report numbers 15-26931, 16-22599, 2016-03140098, 2017-00310409, and 2017-01460406 involve 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). Thus, the information is generally confidential under section 58.007(c). It does not appear any of the exceptions in section 58.007 apply to report numbers 15-26931 and 16-22599. Therefore, the department must withhold report numbers 15-26931 and 16-22599 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Report number 2017-00800584 also involves delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03. However, we are unable to determine the age of the suspect listed in the information at issue. Accordingly, we must rule in the alternative. If the suspect at issue was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then, as it does not appear any of the exceptions in section 58.007 apply, the department must withhold report number 2017-00800584 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the suspect at issue was under ten years of age or was seventeen years of age or older at the time of the conduct, then the information does not involve juvenile conduct for purposes of section 58.007(c) of the Family Code, and no portion of report number 2017-00800584 may be withheld under section 552.101 of the Government Code on that basis.

In this instance, however, the requestor is a parent of one of the juvenile offenders at issue in report numbers 2016-03140098, 2017-00310409, and 2017-01460406. Therefore, this requestor has a right to inspect information concerning her child under section 58.007(e), and it may not be withheld from her under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. *Id.* § 58.007(e). However, section 58.007(j)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor’s child must be redacted. *See id.* § 58.007(j)(1). Further, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, we will address the department’s argument under section 552.108 of the Government Code for report number 2017-00310409. We will also address other exceptions to disclosure of report numbers 2016-03140098 and 2017-01460406.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department states report number 2017-00310409 pertains to an active criminal investigation or prosecution. Based on this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co.*

v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to report number 2017-00310409.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identity of the arrestee. See ORD 127 at 3-4. Thus, with the exception of the basic information, the department may withhold report number 2017-00310409 under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses section 58.007(j)(1) of the Family Code. As noted above, section 58.007(j)(1) states any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor's child shall be withheld from disclosure. Fam. Code § 58.007(j)(1). Accordingly, the department must withhold the identity of a juvenile suspect, offender, victim, or witness who is not the requestor's child, which we marked within report number 2016-03140098 and within the basic information related to report number 2017-00310409, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. See *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the department must withhold the public citizen's date of birth we marked within report number 2017-01460406 under section 552.101 of the Government Code in conjunction with common-law privacy.

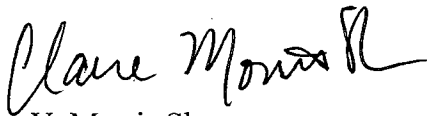
In summary, the department must withhold report numbers 15-26931 and 16-22599 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the suspect in report number 2017-00800584 was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the department must also withhold report number 2017-00800584 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of the basic information, the department may withhold report number 2017-00310409 under section 552.108(a)(1) of the Government Code; however, in releasing the basic information related to report number 2017-00310409, the department must withhold the identity of a juvenile offender who is not the requestor's child, which we marked, under section 552.101

of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The department must also withhold the identity of a juvenile suspect, offender, victim, or witness who is not the requestor's child within report number 2016-03140098, which we 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 the public citizen's date of birth we marked within report number 2017-01460406 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information to this requestor.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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/bw

Ref: ID# 674631

Enc: Submitted documents

c: Requestor
(w/o enclosures)

¹We note the requestor has a right of access to the information at issue pursuant to section 58.007(e) of the Family Code. *See* Fam. Code § 58.007(e). If the department receives another request for this information from a different requestor, the department must again seek a ruling from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).