



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 31, 2017

Ms. Ashley L. White
Counsel for the City of Lancaster
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2017-20005

Dear Ms. White:

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# 674234.

The City of Lancaster (the "city"), which you represent, received five requests for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the submitted information was the subject of previous requests for information, in response to which this office issued Open Records Letter No. 2017-14623 (2017). In Open Records Letter No. 2017-14623, we determined the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With respect to the first, third, fourth, and fifth requestors, there is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the city must continue to rely on Open Records Letter No. 2017-14623 as a previous determination and withhold the submitted information in accordance with that ruling from the first, third, fourth, and fifth requestors. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, the second requestor is a parent of a child victim listed in the submitted information and is not

suspected of committing the alleged abuse. Accordingly, this requestor has a special right of access to information pertaining to her child under section 261.201(k) of the Family Code. Thus, we find the circumstances have changed in regard to this information with respect to the second requestor, and the city may not rely on Open Records Letter No. 2017-14623 as a previous determination with respect to the second requestor. *See id.* Accordingly, we will consider your arguments against disclosure of the submitted information with respect to the second requestor. Further, we will consider your arguments against the disclosure of the submitted information that is not subject to the prior ruling.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information other statutes make confidential, such as section 261.201 of the Family Code. 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:

...

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

Id. § 261.201(a), (k), (l)(2). Upon review, we find the submitted information was used or developed in an investigation by the city's police department under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1) (defining "abuse" for purposes of section 261.201). Accordingly, we find the submitted information is within the scope of section 261.201(a). The city does not indicate it has adopted a rule that governs the release of this type of information. Accordingly, we assume no such rule exists. Given that assumption, the city must withhold the submitted information from the first, third, fourth, and fifth requestors under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, the second requestor is a parent of one of the child victims in the submitted information and is not alleged to have committed the suspected abuse. Therefore, the city may not withhold this information from the second requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). Section 261.201(l)(2) provides 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). Therefore, we will address the city's remaining arguments against disclosure of the submitted information with respect to the second requestor.

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 confidential under section 58.007. *Id.* § 58.007(c). 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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information at issue in regards to the first, third, fourth, and fifth requestors.

(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. 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). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party; it is only applicable to juveniles listed as suspects or offenders. *See id.* §§ 58.007, 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Upon review, we find you have failed to demonstrate the submitted information identifies an individual who is ten years of age or older and under the age of seventeen as a suspect or offender of delinquent conduct or conduct indicating a need for supervision. Therefore, the city may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

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). You state the submitted information pertains to pending criminal cases. Based on your representation, we conclude the release of the submitted information 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 the submitted information.

However, 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 does not include dates of birth. *See* ORD 127. Thus, with the exception of the basic information, you may withhold the submitted information under section 552.108(a)(1) of the Government Code from the second requestor.

We note portions of the basic information may be subject to section 552.1175 of the Government Code.² Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security

²The 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).

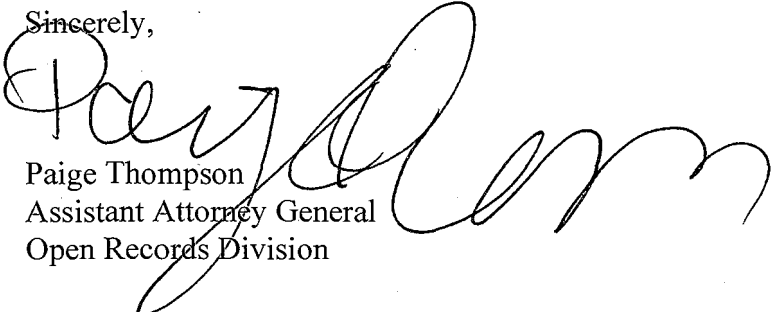
number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175(b). Some of the basic information pertains to a peace officer that is not held by the city in an employment capacity. Accordingly, if the peace officer at issue elected to restrict access to his information in accordance with section 552.1175(b), the city must withhold the information we marked under section 552.1175 of the Government Code.

In summary, the city must continue to rely on Open Records Letter No. 2017-14623 as a previous determination and withhold the submitted information in accordance with that ruling from the first, third, fourth, and fifth requestors. The city must withhold the submitted information that was not subject to Open Records Letter No. 2017-14623 from the first, third, fourth, and fifth requestors under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the basic information, which must be released to the second requestor, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code from the second requestor. In releasing the basic information to the second requestor, the city must withhold the information we marked under section 552.1175 of the Government Code if the peace officer at issue elected to restrict access to his information in accordance with section 552.1175(b) of the Government Code.

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# 674234

Enc. Submitted documents

c: 5 Requestors
(w/o enclosures)