



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 28, 2017

Lieutenant William Ryan
Pharr Police Department
P.O. Box 1729
Pharr, Texas 78577

OR2017-22237

Dear Lt. Ryan:

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# 677597 (Ref. No. P000047-071317).

The Pharr Police Department (the "department") received a request for (1) information pertaining to specified prior public information requests, (2) police reports pertaining the requestor's clients, and (3) police reports pertaining to incidents perpetrated by two named individuals against one of the requestor's clients. You state you have released some information to the requestor. 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.

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. Section 552.101 encompasses section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the 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 Subsection (c) or Subchapter B, D, or E.

...

(d) Law enforcement records concerning a child may be inspected or copied by:

(1) a juvenile justice agency, as defined by Section 58.101;

(2) a criminal justice agency, as defined by Section 411.082, Government Code;

(3) the child; or

(4) the child's parent or guardian.

Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 13 (to be codified at Fam. Code § 58.008(b), (d)); *see* Fam. Code § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code).¹ Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code).

Upon review, we find some of the submitted information involves juvenile offenders, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply to report number 2009-00012121; therefore, the department must

¹Although you raise section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, we note the 85th Legislature repealed this provision effective September 1, 2017. Act of May 28, 2017, 85th Leg., R.S., ch. 746 (S.B. 1304), § 21.

withhold report number 2009-00012121 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.²

Although the requestor is the authorized representative of a parent of the juvenile offenders in report numbers 2013-00021765, 2014-00006355, 2014-00013281, and 2015-00048917, the juveniles at issue are now adults. Accordingly, the requestor no longer has a right of access to the records pertaining to her client's adult children under section 58.008(d). Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 13 (to be codified at Fam. Code § 58.008(d)). Further, it does not appear any of the exceptions in section 58.008 apply to the reports at issue. Therefore, the department must withhold report numbers 2013-00021765, 2014-00006355, 2014-00013281, and 2015-00048917 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.³

Further, one of the requestor's clients may be the legal guardian of the juvenile offender at issue in report number 2016-00049090, and therefore, may have access to the information at issue pursuant to section 58.008(d) as the child's legal guardian's authorized representative. *Id.* Therefore, we must rule conditionally. If the requestor's client is not a legal guardian of the juvenile offender at issue, then the department must withhold report number 2016-00049090 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.⁴ If the requestor's client is a legal guardian of the juvenile offender at issue, then the department may not withhold the information at issue on that ground. *See id.* In this instance, as you raise no other exceptions to disclosure for this information, it must be released.

Additionally, upon review, we are unable to determine the age of the offenders listed in report number 2016-00033226. Accordingly, we must rule conditionally. If any of the offenders at issue were ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the department must withhold report number 2016-00033226 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.⁵ However, if none of the offenders at issue were ten years of age or older and under seventeen years of age at the time of the conduct, then the information does not

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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

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

involve juvenile conduct for purposes of section 58.008(b) of the Family Code, and no portion of the information at issue may be withheld under section 552.101 of the Government Code on that basis. In that instance, as no other exceptions were raised, the department must release this information. Further, as the defendants at issue in report number 2014-00006351 were not juveniles, section 58.008 is not applicable to the information, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information made confidential by 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.

...

(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.

Fam. Code § 261.201(a), (k). Upon review, we find the information we marked was used or developed in an investigation conducted under chapter 261 of the Family Code by the department, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Although the requestor is the authorized representative of a parent of the child victim listed in the information at issue, the

parent at issue is alleged to have committed the alleged abuse or neglect. Thus, the requestor does not have a right of access to the information at issue under section 261.201(k). *Id.* § 261.201(k). You do not indicate the department has adopted any rules that would permit the release of the information at issue, and therefore, we assume no such rule exists. Given that assumption, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.⁶ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In summary, the department must (1) withhold report numbers 2009-00012121, 2013-00021765, 2014-00006355, 2014-00013281, and 2015-00048917 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code and (2) withhold the marked information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor's client is not a legal guardian of the juvenile offender at issue, then the department must withhold report number 2016-00049090 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If any of the offenders at issue were ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the department must withhold report number 2016-00033226 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. In the instance that the department may not withhold report numbers 2016-00033226 and 2016-00049090 under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code, the department must release those reports.⁷

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.

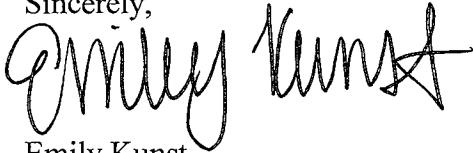
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

⁶As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁷We note the information being released in this instance includes information that is confidential with respect to the general public. *See* Fam. Code § 58.008(d); *see also* Gov't Code § 552.023 (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). Therefore, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.

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 that reads "Emily Kunst". The signature is written in a cursive style with a large, looped "E" and a stylized "K".

Emily Kunst
Assistant Attorney General
Open Records Division

EK/tdw

Ref: ID# 677597

Enc. Submitted documents

c: Requestor
(w/o enclosures)