



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 27, 2017

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2017-24553

Dear Mr. Kopp:

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# 681818 (Internal Ref. No. W179902).

The City of San Antonio (the "city") received a request for all police reports pertaining to certain animal related calls during a defined time period. You state the city will release some information. 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. This section encompasses information made confidential by other statutes, including 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.

Fam. Code § 261.201(a). You state some of the submitted information was used or developed in investigations by the city's police department of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *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). Upon review, we find the information we have marked is within the scope of section 261.201(a). You have not indicated the city's police department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Accordingly, the city 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 you have failed to demonstrate the remaining information involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 of the Family Code, or that this information was used or developed in an investigation under chapter 261. Accordingly, we conclude the city may not withhold any of the remaining information under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses section 58.008(b) 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 and 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.

Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 13, 2017 Tex. Sess. Law Serv. 3173, 3176-77 (to be codified at Fam. Code § 58.008(b)); *see also* Fam. Code § 51.03(a) (defining "delinquent conduct" for purposes of title 3 of Family Code); Act of May 19, 2017, 85th

Leg., R.S., ch. 324, § 7.002, 2017 Tex. Sess. Law Serv. 848 (to be codified as amendment to Fam. Code § 51.03(b)); Act of May 30, 2017, 85th Leg., R.S., ch. 685, § 25, 2017 Tex. Sess. Law Serv. 3044, 3057 (to be codified as amendments to Fam. Code § 51.03(b)) (defining “conduct indicating a need for supervision”). 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 ten years old and less than seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We understand you to assert the marked information is subject to section 58.008(b).¹ Upon review, we find offense report number SAPD17147325 involves delinquent conduct or conduct indicating a need for supervision for section 58.008(b) purposes. However, we are unable to discern the age of the offender in the information at issue. It does not appear that any of the exceptions in section 58.008 apply. Thus, to the extent the offender identified in offense report number SAPD17147325 was ten years of age or older and under seventeen years of age at the time of the conduct at issue, this report is confidential under section 58.008(b) of the Family Code and the city must withhold it in its entirety under section 552.101 of the Government Code on that basis. However, to the extent the offender identified in offense report number SAPD17147325 was not ten years of age or older and under seventeen years of age at the time of the conduct at issue, this information is not confidential pursuant to section 58.008(b) and the city may not withhold it under section 552.101 on that basis. In that instance, we will consider your remaining argument against disclosure of this information.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.). Upon review, we find some of the information at issue satisfies the standard articulated in *Industrial Foundation*. We note one date of birth within the information at issue pertains to an individual who will be de-identified and thus, their privacy interests will be protected. Accordingly, within the information at issue, the city must withhold the information we have marked and all public citizens’ dates of birth not pertaining to de-identified individuals under

¹Although the city raises 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.

section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold this information under section 552.101 on that basis.

In summary, the city 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. To the extent the offender identified in offense report number SAPD17147325 was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the city must withhold this report in its entirety under section 552.101 of the Government Code in conjunction with 58.008(b) of the Family Code. The city must withhold the information we have marked and all public citizens' dates of birth not pertaining to de-identified individuals under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 681818

Enc. Submitted documents

c: Requestor
(w/o enclosures)