



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 6, 2017

Ms. Shea Smith  
Assistant City Attorney  
City of Sugar Land  
P.O. Box 110  
Sugar Land, Texas 77487-0110

OR2017-25315

Dear Ms. Smith:

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# 684944 (ORR# W002781).

The Sugar Land Police Department (the "department") received a request for all records pertaining to a named individual. The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.136 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

Except as provided by Section 261.203, the 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). Upon review, we find the submitted information was used or developed in an investigation of alleged abuse or neglect of a child by the department pursuant to section 261.201(a)(1) of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). Therefore, the department must generally withhold the submitted under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, section 261.201(a) provides information encompassed by that section may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law[.]” *Id.* § 261.201(a). We note section 58.008 of the Family Code constitutes applicable state law for purposes of section 261.201(a) of the Family Code. Accordingly, we must address the applicability of section 58.008 to the submitted information.

Section 552.101 of the Government Code also 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) (defining “delinquent conduct” for purposes of title 3 of Family Code). 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). The submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b). Therefore, the submitted information is generally confidential under section 58.008(b) of the Family Code.

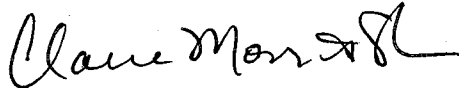
However, we note the requestor is a representative of the Brazos County Sheriff's Office (the “sheriff's office”). Section 58.008(d) of the Family Code gives a “criminal justice agency, as defined by Section 411.082, Government Code” a right of access to juvenile law enforcement records. Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 13. Section 411.082 of the Government Code defines a “criminal justice agency” as including “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” Gov't Code § 411.082(3)(A). The sheriff's office is a criminal justice agency as defined by section 411.082. *See id.* Accordingly, the requestor generally has a right of access to the submitted information under section 58.008(d) of the Family Code. We note a statutory right of access prevails over a claim under common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Further, although the department asserts section 552.136 to withhold portions of the information, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Because section 552.136 is a general exception under the Act, the requestor's statutory access under section 58.008(d) prevails and the department may not withhold the information it marked under section 552.136 of the Government Code. But, as discussed above, the submitted information is also subject to section 261.201(a) of the Family Code, and records subject to section 261.201 may be disclosed only under applicable state law and for purposes consistent with the Family Code. *See* Fam. Code § 261.201(a). Section 58.008(d) is applicable state law allowing disclosure to the sheriff's

office. Therefore, the department must determine whether releasing the submitted information is consistent with the Family Code. Accordingly, if the department determines the sheriff's office intends to use the submitted information for purposes consistent with the Family Code, then the department must release the submitted information to the requestor pursuant to section 58.008(d) of the Family Code. *See id.* § 261.201(b)-(g), (k), (l) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute). Conversely, if the department determines the sheriff's office does not intend to use the submitted information for purposes consistent with the Family Code, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family 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](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/tdw

Ref: ID# 684944

Enc. Submitted documents

c: Requestor  
(w/o enclosures)