



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 28, 2017

Ms. Debra L. Goetz
Counsel for the McAllen Independent School District
Atlas, Hall & Rodriguez, L.L.P.
P.O. Box 3725
McAllen, Texas 78502-3725

OR2017-27040

Dear Ms. Goetz:

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# 685302 (ORR# M000819-091117).

The McAllen Independent School District (the "district"), which you represent, received a request for specified incident reports pertaining to the requestor. 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.

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 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.

(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.

(e) Before a child or a child's parent or guardian may inspect or copy a record concerning the child under Subsection (d), the custodian of the record shall redact:

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

Fam. Code § 58.008(b), (d), (e)(2)); *see id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). We understand the district to assert the information at issue is subject to section 58.008(b).¹ Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Fam. Code 58.008(b). The juvenile must have been at least

¹Although the district argues the information at issue is made confidential by 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, § 21, 2017 Tex. Sess. Law Serv. 3173, 3187.

10 years old and less than 17 years of age when the conduct occurred. *See id* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, we find report numbers 03072014-000828, 04072014-001183, and 09252015-002184 involve a juvenile offender, so as to fall within the scope of section 58.008(b). Accordingly, this information is generally confidential under section 58.008(b). With respect to report number 04072014-001183, it does not appear any of the exceptions in section 58.008 apply. Therefore, the district must withhold report number 04072014-001183 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.² However, the requestor is the listed juvenile offender in report numbers 03072014-000828 and 09252015-002184, and is now an adult. As such, the requestor has a right to inspect juvenile law enforcement records concerning himself pursuant to section 58.008(d) of the Family Code. *See id* § 58.008(d). Therefore, the district may not withhold report numbers 03072014-000828 and 09252015-002184 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, section 58.008(e)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.008(e)(2). Thus, we will consider your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which 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.

Id. § 261.201(a). Upon review, we find report numbers 03072014-000828 and 04132016-001000 were used in investigations of alleged child abuse or neglect under chapter 261 of the Family Code conducted by the district’s police department (the “department”). *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). You do not indicate

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

the department has adopted any rules that would permit the release of the responsive information. Accordingly, we find the information at issue is subject to chapter 261 of the Family Code. Therefore, we conclude report numbers 03072014-000828 and 04132016-001000 are confidential pursuant to section 261.201(a) of the Family Code and must be withheld under section 552.101 of the Government Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information you marked pertains to a criminal investigation conducted by the department that concluded in a result other than conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue. Therefore, the district may withhold the information you marked within report number 09252015-002184 under section 552.108(a)(2) of the Government Code.

In summary, the district must withhold report number 04072014-001183 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The district must withhold report numbers 03072014-000828 and 04132016-001000 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The district may withhold the information you marked within report number 09252015-002184 under section 552.108(a)(2) of the Government Code. The district must release the remaining information.⁴

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.

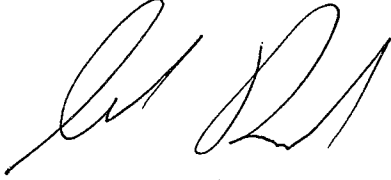
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

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

⁴We note the requestor has a right of access to the information being released pursuant to section 58.008(d) of the Family Code. *See* Fam. Code § 58.008(d). If the district receives another request for this information from a different requestor, the district must again seek a ruling from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

[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,

A handwritten signature in black ink, appearing to read 'S. Pounds', written in a cursive style.

Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 685302

Enc. Submitted documents

c: Requestor
(w/o enclosures)