



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 2, 2019

Ms. Kia Weathersby  
Deputy City Clerk  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2019-00060

Dear Ms. Weathersby:

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# 744182 (City ID Nos. 886, 887, and 888).

The City of Wichita Falls (the "city") received a request for information pertaining to four named individuals during a given period of time. You state you will release some information 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.

Initially, we note some of the submitted information, which we have indicated, is not responsive to the instant request for information because it does not pertain to the time period specified in the request. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to the present request for information.<sup>1</sup> See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

---

<sup>1</sup>As we are able to make this determination, we need not address your remaining arguments against disclosure of this 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 261.201(a) of the Family Code, which provides:

[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). Upon review, we find report numbers 18-041061 and 18-071285 were used or developed by the city in an investigation 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). Accordingly, we find this information is within the scope of section 261.201 of the Family Code. You have not indicated the city has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, report numbers 18-041061 and 18-071285 are generally confidential pursuant to section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

However, the submitted documentation reveals the requestor is a representative of a child-placing agency that is licensed by the Texas Department of Family Protective Services (“DFPS”) in accordance with chapter 42 of the Human Resources Code, and the requestor seeks information that pertains to the addresses of prospective foster parents. *See generally* Hum. Res. Code ch. 42. Section 261.201 of the Family Code provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a). Section 749.2447(7) of title 26 of the Texas Administrative Code constitutes such applicable state law.

A child-placing agency must complete a foster home screening prior to verifying a foster home. *See* 26 T.A.C. § 749.2445(a); Hum. Res. Code § 42.042(a), (h)-(h-1) (executive commissioner shall make rules to carry out provisions of chapter 42, including minimum standards for child-placing agencies). Further, child-placing agencies are required to evaluate a foster home for compliance with licensing rules in certain instances. *See* 26 T.A.C. § 749.2801. Pursuant to section 749.2471, verifying a foster home includes

completing and documenting the requirements set out in section 749.2447 of title 26 of the Texas Administrative Code. *Id.* § 749.2471(1); *cf.* Hum. Res. Code § 42.0561 (providing in part that “[b]efore a child-placing agency may issue a verification certificate for an agency foster home, the child-placing agency must obtain information relating to each family violence report at the applicant’s residence to which a law enforcement agency responded during the 12 months preceding the date of the application. The applicant shall provide the information on a form prescribed by the department.”). Section 749.2447(7) provides a child-placing agency must obtain, document, and assess, in part, the following information about a prospective foster home:

The results of criminal history and central registry background checks conducted on the prospective foster parents[.] . . . With respect to law enforcement service call information, [the child-placing agency] *must do the following*:

(i) *Obtain service call information from the appropriate law enforcement agency for each of the prospective foster parents’ addresses for the past two years.* Discuss with the prospective foster parents any service call information that [the child-placing agency] obtain[s] from a law enforcement agency and the facts surrounding the incident.

...

(iii) Assess and document information obtained from law enforcement and any discussion with the prospective foster parents in the foster home screening.

26 T.A.C. § 749.2447(7)(B)(i), (iii) (emphasis added); *see id.* § 749.2445(a); *see also* 40 T.A.C. § 745.21(8) (defining “child-placing agency”), (32) (defining “permit”), (33) (defining “permit holder”); *see also* 26 T.A.C. §§ 749.41(1) (defining “you” as applicant or permit holder), .43 (words and terms in chapter 749 have meanings assigned under section 745.21). Thus, sections 749.2447(7) and 749.2471 of title 26 of the Texas Administrative Code require a child-placing agency to obtain all service call information for a two year period for service calls to the addresses of prospective foster parents from appropriate law enforcement agencies. *See* 26 T.A.C. §§ 749.2471, .2447(7). Accordingly, we find a child-placing agency licensed by DFPS under chapter 42 of the Human Resources Code has a right of access to this information under section 749.2447(7) when it is obtained for the purpose of verifying a prospective foster home pursuant to the requirements of section 749.2471.

The requestor is seeking information involving prospective foster parents at their residences for a specified time period. Accordingly, we conclude the requestor generally has a right of

access to report numbers 18-041061 and 18-071285 pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code. Although you raise section 552.108 of the Government Code, we note a specific statutory right of access overcomes general exceptions to disclosure in the Act. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge a statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the city may not withhold the information at issue on the basis of section 552.108 of the Government Code.

However, as noted above, section 261.201(a) states any release must be “for purposes consistent with the Family Code.” *See* Fam. Code § 261.201(a). We find release of report numbers 18-041061 and 18-071285 to this requestor is for a purpose consistent with the Family Code. Thus, pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code, the city may not withhold report numbers 18-041061 and 18-071285 under section 552.101 in conjunction with section 261.201(a). Consequently, as no further exceptions to disclosure are raised for report number 18-071285, the city must release this information pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code.

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 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.

*Id.* § 58.008(b); *see also id.* § 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.<sup>2</sup> The juvenile must have been at least 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 the Family Code). Upon review, we find report number 18-041061 involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear any of the exceptions in section 58.008 apply. Accordingly, the city must generally withhold report number 18-041061 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

However, as noted above, the requestor has a right of access to the information at issue pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code. Accordingly, with respect to the information at issue, we find there is a conflict between the confidentiality provided under section 58.008 of the Family Code, and the right of access afforded to the requestor pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See Gov't Code* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless general provision is later enactment and manifest intent is that general provision prevails); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). While section 58.008(b) generally makes juvenile law enforcement records confidential with respect to the general public, section 749.2447(7) requires release of information for a specified address and time period to a specified type of requestor in a certain circumstance — a child-placing agency verifying a foster home at that address. *See Fam. Code* § 58.008(b); 26 T.A.C. § 749.2447(7). Thus, the statutory right of access granted to the requestor by section 749.2447(7) of title 26 of the Texas Administrative Code prevails over the more general confidentiality provision of section 58.008(b) of the Family Code. Consequently, the city may not withhold report number 18-041061 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. Thus, the city must release report number 18-041061 pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code.

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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.*

---

<sup>2</sup>Although 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, § 21, 2017 Tex. Sess. Law Serv. 3173, 3187. Thus, we understand you to raise section 58.008(b) of the Family Code.

at 683; *see also* Open Records Decision No. 659 at 5. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks unspecified law enforcement records pertaining to named individuals. This request requires the city to compile the named individuals' criminal history and implicates the privacy of the named individuals. Therefore, to the extent the city maintains law enforcement records listing any of the named individuals as a suspect, arrestee, or criminal defendant that fall outside the two year time period specified by section 749.2447(7), the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, information that refers to a named individual solely as a victim, witness, or involved person is not part of a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted information in which none of the named individuals are depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of any of the individuals and may not be withheld as a compilation of criminal history. Accordingly, we will address your arguments against disclosure of this information.

We note the remaining information contains court-filed documents subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[.]" unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The city seeks to withhold the information at issue under section 552.108 of the Government Code. However, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold the court-filed documents, which we have marked, under section 552.108. As no further exceptions to disclosure are raised for the information at issue, the city must release the information we marked pursuant to section 552.022(a)(17) of the Government 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 requested information would interfere with law enforcement. *Id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1976). You state report numbers 16-031400 and 18-100645 pertain to active criminal investigations or prosecutions, and release of the information at issue would interfere with the investigation and prosecution of the cases. Based on your representations, we conclude the release of the information we indicated 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 notes law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 611 (1992). Thus, section 552.108(a)(1) is applicable to report numbers 16-031400 and 18-100645.

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. 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 has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state report numbers 15-090322, 16-070679, and 16-120096 pertain to closed investigations that did not result in convictions or deferred adjudications. Based on your representation, we agree section 552.108(a)(2) is applicable to report numbers 15-090322, 16-070679, and 16-120096.

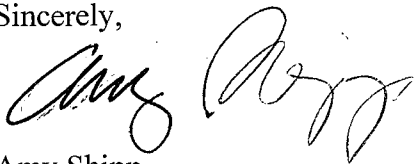
However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d 177 at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the marked information subject to section 552.022(a)(17) and the basic information, which must be released, the city may withhold report numbers 16-031400 and 18-100645 under section 552.108(a)(1) of the Government Code and report numbers 15-090322, 16-070679, and 16-120096 under section 552.108(a)(2) of the Government Code.

In summary, the city must release report numbers 18-041061 and 18-071285 to this requestor pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code. To the extent the city maintains law enforcement records listing any of the named individuals as a suspect, arrestee, or criminal defendant that fall outside the two year time period specified by section 749.2447(7), the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the marked information subject to section 552.022(a)(17) and the basic information, which must be released, the city may withhold report numbers 16-031400 and 18-100645 under section 552.108(a)(1) of the Government Code and report numbers 15-090322, 16-070679, and 16-120096 under section 552.108(a)(2) 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](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,



Amy Shipp  
Assistant Attorney General  
Open Records Division

ALS/eb

Ref: ID# 744182

Enc. Submitted documents

c: Requestor  
(w/o enclosures)