



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 31, 2019

Ms. P. Armstrong  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar, 6th Floor, 6W  
Dallas, Texas 75215

OR2019-02945

Dear Ms. Armstrong:

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# 748457 (ORR# D028505-110118).

The Dallas Police Department (the "department") received a request for information pertaining to a specified incident involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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:

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<sup>1</sup>We note the department did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). Nonetheless, because sections 552.101 and 552.147 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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.

Fam. Code § 58.008(b). We understand you to assert the submitted information is subject to section 58.008(b).<sup>3</sup> Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). 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 Family Code). Upon review, we find you have failed to demonstrate any portion of the submitted information identifies an individual who is ten years of age or older and under the age of seventeen as a suspect or offender of delinquent conduct or conduct indicating a need for supervision. Therefore, the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 261.201 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 [chapter 261 of the Family Code] and the identity of the person making the report; and

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<sup>3</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, 3178.

(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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we agree the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Thus, this information falls within the scope of section 261.201 of the Family Code. Therefore, we find the submitted information is generally confidential under section 261.201(a) of the Family Code. Section 261.201(a), however, also provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a).

Chapter 411 of the Government Code constitutes “applicable state law” in this instance. The requestor is an investigator with the Texas Department of Licensing and Regulation (the “TDLR”). Sections 411.093 and 411.122 of the Government Code both provide the TDLR is entitled to obtain criminal history record information (“CHRI”) maintained by the Texas Department of Public Safety (“DPS”) that relates to a person who is an applicant for a license issued by the TDLR. Gov’t Code §§ 411.093(a), .122(a)(1), .122(d)(10). Section 411.087 of the Government Code provides an agency that is entitled to obtain CHRI from DPS is also authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency[.]” *Id.* § 411.087. CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). Thus, when read together, sections 411.087, 411.093, and 411.122 of the Government Code may grant the TDLR a right of access to CHRI in the submitted information.

In this instance, the requestor does not indicate whether she is conducting a criminal background check on an individual who has applied for licensure with the TDLR. Accordingly, if the CHRI within the submitted report relates to an applicant for a license issued by the TDLR and the department determines release of the information at issue is consistent with the purposes of the Family Code, then, pursuant to sections 411.087, 411.093, and 411.122 of the Government Code, the department must release the information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that event, the department must withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the individual at issue is not an applicant for a license issued by TDLR or if the department determines release of the information at issue is not consistent with the purposes of 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 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,

A handwritten signature in black ink, appearing to read "D. Michelle Case", with a long horizontal flourish extending to the right.

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/gw

Ref: ID# 748457

Enc. Submitted documents

c: Requestor  
(w/o enclosures)