

March 5, 2019

Mr. John C. Lemon  
Counsel for the City of Alice  
Lemon & Gonzalez-lemon, L. L. P.  
520 East Second Street  
Alice, Texas 78332

OR2019-06108

Dear Mr. Lemon:

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# 754033.

The Alice Police Department (the “department”), which you represent, received a request for all incident reports involving Alice Independent School District campuses during a specified time period. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we marked, is not responsive to the request for information because it was created outside of the time period specified by the requestor. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information in response to this request.

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 section 58.008 of the Family Code, which provides, in part:

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<sup>1</sup>Although you do not cite section 552.101 of the Government Code in your brief, we understand you to raise this exception based upon the substance of your argument.

(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); *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. 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 the information we marked involves juvenile offenders, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply; therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

Moreover, some of the remaining responsive information, which we marked, involves delinquent conduct or conduct indicating a need for supervision, but we are unable to determine the age of any suspect listed in the information at issue. Accordingly, we must rule conditionally with respect to this information. To the extent an offender in the reports we noted was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then, as it does not appear any of the exceptions in section 58.008 apply, the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, to the extent the information we noted involves an offender who was under ten years of age or who was seventeen years of age or older at the time of the conduct, then the information does not involve juvenile conduct for purposes of section 58.008(b) of the Family Code, and no portion of the information at issue may be withheld under section 552.101 of the Government Code on that basis. Upon review, however, we find you have failed to demonstrate any portion of the remaining responsive 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 any of the remaining responsive 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 section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under chapter 552, Government Code, 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 information we marked was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes). Thus, the information at issue is confidential under section 261.201. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Moreover, we find report number 2018013335 may have been used or developed in an investigation of alleged or suspected child abuse or neglect. However, we are unable to determine the age of the victim listed in the report at issue. Thus, we must rule conditionally with respect to this information. To the extent report number 2018013335 pertains to an incident involving a victim who was under the age of eighteen at the time of the incident, then the information is subject to section 261.201 of the Family Code, and the department must withhold it in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If, however, the victim in the information at issue was eighteen years of age or older at the time of the incident, section 261.201 is not applicable to this information, and the department may not withhold the information under section 552.101 of the Government Code on that basis. However, upon review, we find you have not demonstrated any of the remaining responsive information consists of a report of alleged or suspected child abuse or neglect, nor does the information reveal the identity of an individual who made a report of alleged or suspected child abuse or neglect for purposes of section 261.201(a)(1). *See id.* §§ 101.003(a), 261.001(1), (4). Furthermore, we find you have failed to demonstrate any of the remaining responsive information was used or developed in an investigation of alleged or suspected child abuse or neglect under section

261.201(a)(2). Accordingly, the department may not withhold any of the remaining responsive information under section 552.101 in conjunction with section 261.201(a).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). Thus, the department must withhold all public citizens' dates of birth in the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>2</sup> See Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, this ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information in response to this request. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. To the extent the remaining reports we marked involve an offender who was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the department must also withhold this information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If report number 2018013335 pertains to an incident involving a victim who was under the age of eighteen at the time of the incident, then the department must also withhold this report under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold all public citizens' dates of birth in the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we marked under

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.130 of the Government Code. The department must release the remaining responsive information.<sup>3</sup>

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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/jxd

Ref: ID# 754033

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the information being released includes social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).