



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2019

Mr. John B. Strong
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2019-10000

Dear Mr. Strong:

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# 759320 (ORR# W080680).

The City of Fort Worth (the "city") received a request for information pertaining to a named individual. The city states it has released criminal history record information ("CHRI").¹ The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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. This section encompasses section 261.201 of the Family Code, which provides, in relevant part, as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent

¹See Gov't Code § 411.087(a)(2) (entity authorized by chapter 411, subchapter F of Government Code to obtain CHRI maintained by Texas Department of Public Safety ("DPS") that relates to another person is authorized to obtain CHRI from any other criminal justice agency in this state that relates to the person); *see also id.* § 411.089 (criminal justice agency entitled to obtain from DPS any CHRI maintained by DPS about a person).

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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report;
or

(B) another child of the parent, managing conservator,
or other legal representative requesting the
information;

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

Fam. Code § 261.201(a), (k), (l)(1)-(2). The city asserts the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the

Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Upon review, we find the submitted information is within the scope of section 261.201(a). The requestor is a representative of the child victim, who is now an adult, and this individual is not alleged to have committed the suspected abuse. Thus, the city may not withhold the submitted information from the requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(1) states any personally identifiable information about a victim or witness who is under 18 years of age and is not the child of the parent, managing conservator, or other legal representative requesting the information shall be withheld from disclosure. *Id.* § 261.201(l)(1). Thus, the city must withhold any information that identifies a witness who is under 18 years of age in the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code. In addition, section 261.201(l)(2) provides any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we must determine whether the remaining information is otherwise excepted from release under the Act.

Section 552.101 of the Government Code also encompasses section 58.008(b) of the Family Code, which provides as follows:

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)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” 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., ch. 746, § 22, 2017 Tex. Sess. Law Serv. 3173, 3187.* The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See Fam. Code § 51.02(2)* (defining “child” for purposes of title 3 of Family Code). We are unable to determine the ages of any of the offenders at

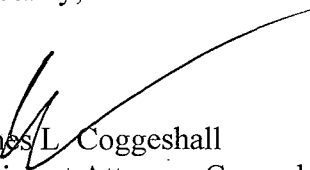
issue in the submitted information. Therefore, we must rule conditionally. If any of the offenders in the submitted information was at least ten years old and less than seventeen years of age when the conduct occurred, then the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.² However, if none of the offenders was at least ten years old and less than seventeen years of age when the conduct occurred, then the city may not withhold the information on that ground.

In summary, if any of the offenders in the submitted information was at least ten years old and less than seventeen years of age when the conduct occurred, then the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If none of the offenders was at least ten years old and less than seventeen years of age when the conduct occurred, then the city must withhold any information that identifies a witness who is under 18 years of age in the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(l)(1) of the Family Code, but must release the remaining information.

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, 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

²As noted above, the city states it has released CHRI pursuant to section 411.087(a)(2) of the Government Code. See Gov't Code § 411.087(a)(2).

Ref: ID# 759320

Enc. Submitted documents

c: Requestor
(w/o enclosures)