



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 23, 2019

Ms. Brittaney N. Davis  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3rd Floor  
Fort Worth, Texas 76102-6311

OR2019-10698

Dear Ms. Davis:

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# 761145 (PIR No. W081020).

The Fort Worth Police Department (the "department") received a request for information pertaining to a named individual, including specified incidents. The department claims the requested 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. Section 552.101 encompasses section 261.201 of the Family Code, which provides, in relevant part, the following:

(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.

Fam. Code § 261.201(a). Upon review, we agree report numbers 95113736, 95118707, and 98170888 were used or developed in investigations of alleged or suspected child abuse. *See 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 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 is within the scope of section 261.201(a). The department does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we find report numbers 95113736, 95118707, and 98170888 are generally confidential under section 261.201(a). However, we find the department failed to demonstrate the remaining information at issue is a report of child abuse or neglect, or was used or developed in an investigation under chapter 261. Therefore, we conclude section 261.201 is not applicable to the remaining information at issue, and it may not be withheld under section 552.101 of the Family Code on that basis. We note report numbers 95113736, 95118707, and 98170888 are also subject to section 58.008 of the Family Code. Therefore, we will address the applicability of section 58.008 to these reports as well as to the remaining information.

Section 552.101 of the Government Code also encompasses section 58.008 of the Family Code, which provides, in part, the following:

(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 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:

...

(2) a criminal justice agency, as defined by Section 411.082, Government Code[.]

*Id.* § 58.008(b), (d)(2); *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. 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 agree the submitted reports all involve a juvenile offender, so as to fall within the scope of section 58.008(b).

However, we note the requestor is a representative of the San Diego County Probation Department of California (the “probation department”). Section 58.008(d)(2) of the Family Code gives a “criminal justice agency,” as defined by section 411.082 of the Government Code a right of access to juvenile law enforcement records. *See id.* § 58.008(d)(2). Section 411.082 of the Government Code defines a “criminal justice agency” as including “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” Gov’t Code § 411.082(3)(A). Thus, we find the requestor is requesting the information on behalf of a criminal justice agency as provided by section 58.008(d) of the Family Code.

However, we note report number 98170888 lists the named individual as a witness in the incident at issue. Although the requestor is a representative of the probation department, the requestor is seeking information about a witness and not the juvenile offender listed in report number 98170888. Thus, we conclude the requestor does not have a right of access to report number 98170888 under section 58.008(d) of the Family Code. Therefore, report number 98170888 is confidential under section 58.008(b) of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>1</sup>

Nonetheless, the requestor generally has a right of access under section 58.008(d) to the remaining submitted reports. A statutory right of access prevails over a claim under

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information except to note, because report number 98170888 does not contain criminal history information (“CHRI”) of the individual named in the request for information, we do not address whether the requestor, who is a representative of the probation department, has a right of access to CHRI in this report under section 411.087(a)(2) of the Government Code. *See* Gov’t Code § 411.087(a)(2); *see also id.* § 411.089.

common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, the department may not withhold the remaining reports under section 552.101 in conjunction with section 58.008(b) of the Family Code or common-law privacy.

However, as discussed above, report numbers 95113736 and 95118707 are also subject to section 261.201(a) of the Family Code, and records subject to section 261.201 may be disclosed only under applicable state law and for purposes consistent with the Family Code. *See Fam. Code* § 261.201(a). Section 58.008(d)(2) is applicable state law allowing disclosure to the requestor. Therefore, the department must determine whether releasing report numbers 95113736 and 95118707 is consistent with the Family Code. Accordingly, if the department determines the requestor intends to use the information at issue for purposes consistent with the Family Code, then the department must release report numbers 95113736 and 95118707 pursuant to section 58.008(d)(2) of the Family Code. *See id.* § 261.201(b)-(g), (k), (l) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute). Conversely, if the department determines the requestor does not intend to use report numbers 95113736 and 95118707 for purposes consistent with the Family Code, then the department must withhold these reports in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

In summary, the department must withhold report number 98170888 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the department determines the requestor intends to use report numbers 95113736 and 95118707 for purposes consistent with the Family Code, then the department must release these reports pursuant to section 58.008(d)(2) of the Family Code. However, if the department determines the requestor does not intend to use report numbers 95113736 and 95118707 for purposes consistent with the Family Code, then the department must withhold these reports in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must release the remaining information to this requestor.<sup>2</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.

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<sup>2</sup>Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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 L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/mo

Ref: ID# 761145

Enc. Submitted documents

c: Requestor  
(w/o enclosures)