



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 12, 2019

Mr. Mark C. Kratovil
Assistant Criminal District Attorney
Tarrant County
401 West Belknap Street, 9th Floor
Fort Worth, Texas 76196-0201

OR2019-15802

Dear Mr. Kratovil:

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# 770114.

Tarrant County Juvenile Services (the "county") received a request for information pertaining to a specified incident involving the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the present request because it does not pertain to the specified incident requested by the requestor or it was created after the date of the present request. This ruling does not address the public availability of the non-responsive information, which we have marked, and the county need not release it 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 information made confidential by other statutes, such as section 261.201(a) 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 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). *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). We note the county is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, pursuant to section 261.405(b) of the Family Code, the county is required to report alleged abuse or neglect in a juvenile justice program to the Texas Juvenile Justice Department (the “TJJD”) and a local law enforcement agency for investigations.¹ *See id.* § 261.405(b), (c) (the TJJD shall conduct investigation if the TJJD receives report of alleged abuse, neglect, or exploitation in any juvenile justice facility). The responsive documents reflect the county reported the alleged abuse to the TJJD and provided some of the information at issue to the TJJD for use in the TJJD’s investigation. Upon review, we conclude the information we have marked consists of reports, records, or working papers used or developed in investigations made under chapter 261 of the Family Code. Therefore, the information we have marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.² *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

Section 552.101 of the Government Code also encompasses section 58.005 of the Family Code, which provides, in part:

- (a) This section applies only to the inspection, copying, and maintenance of a record concerning a child and to the storage of information from which a record could be generated, including personally identifiable information, information obtained for the purpose of diagnosis, examination, evaluation,

¹Effective December 1, 2011, the Texas Juvenile Probation Commission became known as the Texas Juvenile Justice Department. *See* Hum. Res. Code § 201.001(b).

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

or treatment of the child or for making a referral for treatment of the child, and other records or information, created by or in the possession of:

- (1) the Texas Juvenile Justice Department;
- (2) an entity having custody of the child under a contract with the Texas Juvenile Justice Department; or
- (3) another public or private agency or institution having custody of the child under order of the juvenile court, including a facility operated by or under contract with a juvenile board or juvenile probation department.

(a-1) Except as provided by Article 15.27, Code of Criminal Procedure, the records and information to which this section applies may be disclosed only to:

- (1) the professional staff or consultants of the agency or institution;
- (2) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (3) an attorney for the child;
- (4) a governmental agency if the disclosure is required or authorized by law;
- (5) a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;
- (6) the Texas Department of Criminal Justice and the Texas Juvenile Justice Department for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; or
- (7) with permission from the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Fam. Code § 58.005(a), (a-1). Under section 58.005 of the Family Code, a “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family

Code). You inform us the remaining responsive information pertains to a child who is a resident in the custody of the county. However, we note most of the remaining information at issue, which we have generally marked for release, reflects the juvenile involved was seventeen years old at the time of the incident at issue. Because the legislature has chosen to protect the law enforcement records of only a child who is between the ages of ten and sixteen at the time of the reported conduct, we find the information at issue is not confidential under section 58.005 of the Family Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection). Therefore, the county may not withhold any portion of the information we have marked for release under section 552.101 of the Government Code in conjunction of section 58.005 of the Family Code.

Further, a portion of the remaining responsive information does not reflect the ages of the juveniles involved. Because we are unable to determine the ages of the juveniles involved in these documents, we must rule conditionally. To the extent the information we have marked pertains to children who are ten years of age or older and under seventeen years of age, it is confidential pursuant to section 58.005(a) of the Family Code and must be withheld under section 552.101 of the Government Code.³ However, to the extent the information at issue pertains to children who are not ten years of age or older and under seventeen years of age, the county may not withhold the information at issue under section 58.005. In that event, we will address your remaining argument against the disclosure of this information.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides in relevant part the following:

(b) Except as provided by Section 54.051 (d-1) and by Article 15.27, Code of Criminal Procedure, the records, whether physical or electronic, of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under [Title 3 of the Family Code] may be inspected or copied only by:

- (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (2) a juvenile justice agency as that term is defined by Section 58.101;
- (3) an attorney representing a party in a proceeding under this title;
- (4) a person or entity to whom the child is referred for treatment or services, if the agency or institution disclosing the information has

³In that event, our ruling is dispositive, and we do not address your remaining argument against disclosure of this information.

entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;

(5) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(6) with permission from the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Fam. Code § 58.007(b). We note section 58.007, like section 58.005, applies to records concerning a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). As noted above, the information we generally marked for release reflects the juvenile involved was seventeen at the time of the incident at issue. Accordingly, we find the county may not withhold the information we generally marked for release under section 552.101 in conjunction with section 58.007(b) of the Family Code. Further, we are unable to determine the ages of the individuals involved in the remaining responsive information. Therefore, to the extent the information at issue pertains to children who are not ten years of age or older and under seventeen years of age, the county may not withhold it under section 552.101 of the Government Code in conjunction with section 58.007(b) of the Family 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.* at 683. This office has found common-law privacy generally protects the identifying information of a juvenile victim of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Upon review, we find some of the remaining responsive information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

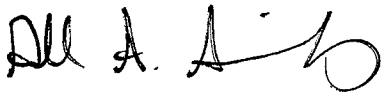
In summary, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent the remaining information we have marked pertains to children who are ten years of age or older and under seventeen years of age, it must be withheld under section 552.101 of the Government Code in conjunction with section 58.005(a) of the Family Code.

The county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The county must release the remaining responsive 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,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with a large loop at the end.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/gw

Ref: ID# 770114

Enc. Submitted documents

c: Requestor
(w/o enclosures)