



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 12, 2019

Ms. Tiffany Bull
Assistant City Attorney
City of Grand Prairie
P. O Box 534045
Grand Prairie, Texas 75053-4045

OR2019-18884

Dear Ms. Bull:

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# 774958 (Reference# GPCA 19-0052).

The Grand Prairie Police Department (the "department") received two requests from the same requestor for a specified police report. 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 representative sample of information.¹

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:

¹We 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 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 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:

(1) a juvenile justice agency, as defined by Section 58.101;

(2) a criminal justice agency, as defined by Section 411.082, Government Code;

(3) the child; or

(4) the child's parent or guardian.

(e) Before a child or a child's parent or guardian may inspect or copy a record concerning the child under Subsection (d), the custodian of the record shall redact:

...

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

Fam. Code § 58.008(b), (d), (e)(2); *see 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., S.B. 1304, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find the submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b). We note that the request for information identifies the requestor as the juvenile’s stepmother. We are unable to determine, however, whether the requestor is the juvenile offender’s parent or guardian, so as to have a right to inspect law enforcement records concerning the juvenile pursuant to section 58.008(d). *See id.* § 58.008(d). Therefore, we must rule conditionally. Accordingly, we conclude that if the requestor is not the juvenile offender’s parent or guardian, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.² But, if the requestor is the juvenile’s parent or guardian, then the requestor has a right to inspect or copy the submitted information under section 58.008(d) of the Family Code. In that event, the submitted information may not be withheld under section 552.101 on the basis of section 58.008(b) of the Family Code. However, section 58.008(e)(2) states any information that is excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 58.008(e)(2). Thus, we will address your other argument against disclosure for the information at issue.

Section 552.101 also 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 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.

...

²As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

(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;

(3) the identity of the person who made the report.

Id. § 261.201(a), (k), (l)(1)-(3). The department asserts the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect 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, who is not alleged to have committed the suspected abuse, may be a parent, managing conservator, or other legal representative of the child victims. Thus, we must rule conditionally. If the requestor is not a parent, managing conservator, or other legal representative of the child victims, 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(a) of the Family Code. If the requestor is a parent, managing conservator, or other legal representative of the child victims, then the department may not withhold the submitted information from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, in that situation, the department must withhold the identity of the reporting party. *Id.* § 261.201(1)(3). In addition, section 261.201(1)(2) states any

information that is excepted from required disclosure under the Act or other law must be redacted. *Id.* § 261.201(1)(2). Therefore, in the event the requestor is a parent, managing conservator, or other legal representative of the child victims, we must address whether the information at issue is otherwise excepted from release.

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 Third 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.). We note if the requestor is the authorized representative of the juvenile offenders and the child victims, she has a right of access to otherwise private information pertaining to the individuals at issue pursuant to section 552.023 of the Government Code. *See Gov't Code* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the department must withhold the date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the requestor is not the juvenile offender's parent or guardian, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the requestor is the juvenile offender's parent or guardian but not a parent, managing conservator, or other legal representative of the child victims, 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(a) of the Family Code. In the event the requestor is the parent, managing conservator, or other legal representative of both the juvenile offender and the child victims, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code and the date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.³

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.

³We note the requestor has a special right of access to the information being released. *See Fam. Code* §§ 58.008(d), 261.201(k); *see also Gov't Code* § 552.023; ORD 481 at 4.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/be

Ref: ID# 774958

Enc. Submitted documents

c: Requestor
(w/o enclosures)