



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 18, 2019

Mr. Jorge L. Trevino, Jr.
Assistant Civil Legal Division Attorney
Webb County
1000 Houston Street, 2nd Floor
Laredo, Texas 78040

OR2019-29350

Dear Mr. Trevino:

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# 792106 (ORR# 2219).

Webb County (the "county") received a request for any and all incident reports pertaining to three named employees of the county's juvenile department during a specified time period. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, and 552.1175 of the Government Code. Additionally, you state release of the submitted information may implicate the interests of the individuals subject to the request. Accordingly, you state, and provide documentations showing, the county notified these individuals of the request for information and of their right to submit comments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim 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 information protected by section 261.201 of the Family Code, which provides, in part, as follows:

- (a) [T]he following information is confidential, is not subject to public release under Chapter 552 of the 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). You assert some of the submitted information is confidential under section 261.201(a) of the Family Code. *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), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). We note the county’s juvenile department 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 (“TJJD”) and a local law enforcement agency for investigations.¹ *See id.* § 261.405(b)-(c) (TJJD shall make a prompt, thorough investigation if TJJD receives report of alleged abuse, neglect, or exploitation in any juvenile justice program or facility). Upon review of the submitted information, we find some of the submitted information consists of reports, records, or working papers used or developed by TJJD or the United Independent School District’s Police Department in investigations made under chapter 261 of the Family Code. Therefore, the information we indicated 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. 400 at 2 (1986) (construing predecessor statute). However, we find the county has failed to demonstrate the remaining information 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 and it may not be withheld on that basis.

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

- (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

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

² As our ruling is dispositive, we need not address the county’s remaining arguments against disclosure of this information.

record could be generated, including personally identifiable information, information obtained for the purpose of diagnosis, examination, evaluation, 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) an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child's release or discharge from a juvenile facility;
- (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;
- (7) a prosecuting attorney;
- (8) a parent, guardian, or custodian with whom a child will reside after the child's release or discharge from a juvenile facility;
- (9) a governmental agency or court if the record is necessary for an administrative or legal proceeding and the personally identifiable

information about the child is redacted before the record is disclosed; or

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

Act of May 14, 2019, 86th Leg., R.S., H.B. 1760, § 1 (to be codified at 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* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). You inform us some of the information at issue pertains to children who are residents in the custody of the county. However, we note the information at issue does not reflect the ages of all 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 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. 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 arguments against disclosure of this information.

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

(b) Except as provided by Subsection (c), 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.

Act of May 14, 2019, 86th Leg., R.S., H.B. 1760, § 4 (to be codified at Fam. Code § 58.008(b)); *see also* Fam. Code § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). We

understand the county to assert portions of the remaining information are subject to section 58.008(b).³ 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. We note section 58.008, 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). Upon review, we find none of the remaining information is confidential under section 58.008(b), and the county may not withhold any of the remaining information under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses section 58.307 of the Family Code, which restricts access to “[i]nformation that is part of a local juvenile justice system.” Fam. Code § 58.307. A “local juvenile justice system” is “a county or multicounty computerized database of information concerning children, with data entry and access by the partner agencies that are members of the system.” *See id.* § 58.301(4). You assert some of the remaining information is subject to section 58.307; however, you have not established that the information at issue came from a local juvenile justice system for purposes of section 58.301. Therefore, you have not established that the remaining information is confidential under section 58.307, and the county may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate and 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). Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has determined common-law privacy generally protects the identifying information of child victims of abuse or neglect, including the child’s victim’s name and the identifying information of the child’s victim’s parents or guardians. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the county must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding

³ Although the county raises section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, we note the 85th Legislature repealed this provision effective September 1, 2017. Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 21, 2017 Tex. Sess. Law Serv. 3173, 3187.

disclosure of personal matters. ORD 455 at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find you have failed to demonstrate any portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the county may not withhold any portion of the remaining information under section 552.101 on the basis of constitutional privacy.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Upon review, we find the county has failed to demonstrate section 552.117(a)(1) of the Government Code is applicable to any of the remaining information. Therefore, the county may not withhold any of the remaining information on that basis.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Upon review, we find the county has failed to establish section 552.1175 of the Government Code is applicable to any of the remaining information. Accordingly, the county may not withhold any of the remaining information on that basis.

In summary, the county 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. To the extent the information we 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. The county must withhold the information we marked under section 552.101 of the Government

Code in conjunction with common-law privacy. The county 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Kimbell Kesling". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Kimbell Kesling
Attorney
Open Records Division

KK/eb

Ref: ID# 792106

Enc. Submitted documents

c: Requestor
(w/o enclosures)