



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 18, 2019

Ms. Marie N. Johnson
Counsel for the City of Van Alstyne
Messer Fort McDonald
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2019-32479

Dear Ms. Johnson:

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# 797182 (ORR# VA081319MG).

The Van Alstyne Police Department (the "department"), which you represent, received a request for information pertaining to the requestor and three named individuals. The department indicates it will withhold information pursuant to section 552.130(c) of the Government Code.¹ The department claims the submitted information is excepted from disclosure under section 552.108 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."² Gov't Code § 552.101. Section 552.101 encompasses section 58.008 of the Family Code, which provides, in part, the following:

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

(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.

...

(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:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

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

Act of May 14, 2019, 86th Leg., R.S., H.B. 1760, §4 (to be codified at Fam. Code § 58.008(b)); Fam. Code § 58.008(d), (e); *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). We find some of the submitted information involves juvenile offenders, so as to fall within the scope of section 58.008(b). Thus, the department must withhold incident report number 18-000458 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.³ However, the requestor is a parent of one of the juvenile offenders at issue in the remaining reports at issue and has access to this information pursuant to section 58.008(d). *See id.* § 58.008(d). Therefore, the department may not withhold the remaining information at issue from the requestor under section 552.101 on the basis of section 58.008(b). *See id.* § 58.008(d). Nevertheless, the department must withhold the personally identifiable information concerning the other juvenile offender in some of these reports, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. *Id.* § 58.008(e)(1). In addition, section 58.008(e)(2) provides information that is subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.008(e)(2). Thus, we will consider whether the remaining information at issue is otherwise excepted from disclosure.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides as follows:

[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.

Id. § 261.201(a). Upon review, we find incident report numbers 16-000139, 16-000315, 16-000517, and 18-000457 were used or developed in investigations under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Thus, the information is within the scope of section 261.201 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Accordingly, the department must withhold report numbers 1616-000139, 16-000315, 16-000517, and 18-000457 under section 552.101 of the Government

³ As our ruling is dispositive, we do not address the arguments of the department to withhold this information.

Code in conjunction with section 261.201(a) of the Family Code.⁴ See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue would interfere with law enforcement. See *id.* §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The department states the remaining information it has marked under section 552.108(a)(1) relates to pending criminal investigations or prosecutions. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the remaining information it has marked under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold incident report number 18-000458 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The department must also withhold report numbers 1616-000139, 16-000315, 16-000517, and 18-000457 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, the department may withhold the remaining information it has marked under section 552.108(a)(1) of the Government Code. In releasing basic information, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code. The department must release the remaining information.⁵

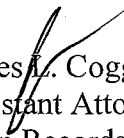
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

⁴ As our ruling is dispositive, we do not address the arguments of the department to withhold this information.

⁵ 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 <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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/be

Ref: ID# 797182

Enc. Submitted documents

c: Requestor
(w/o enclosures)