



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 19, 2019

Ms. Judith N. Benton
Senior Assistant City Attorney
City of Waco
P. O. Box 2570
Waco, Texas 76702-2570

OR2019-32704

Dear Ms. Benton:

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# 797452 (City's Reference# LGL 19-157).

The City of Waco (the "city") received a request for specified incident reports. The city states it has released some of the requested information, but claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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(b) of the Family Code, which provides as follows:

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 We 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.

- (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 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., ch. 746, § 22, 2017 Tex. Sess. Law Serv. 3173, 3187. The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We agree incident report number 07-18235 involves a juvenile offender, so as to fall within the scope of section 58.008(b). The exceptions in section 58.008 do not appear to apply. Therefore, the city must withhold incident report number 07-18235 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, we are unable to determine the age of any of the offenders at issue in incident report number 03-22725. Accordingly, we must rule conditionally. If any of the offenders in incident report number 03-22725 was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the city must withhold this report under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If none of the offenders was ten years of age or older and under seventeen years of age at the time of the conduct, then the city may not withhold the report under section 552.101 on that basis.

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). The city asserts Exhibit 4 was used or developed in an investigation by the city's police department (the "department") 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). Upon review, we find the information is within the scope of section 261.201 of the Family Code. The city does not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the city must withhold Exhibit 4 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In summary, the city must withhold the following: (1) incident report number 07-18235 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code; (2) incident report number 03-22725 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code if any of the offenders was ten years of age or older and under seventeen years of age at the time of the conduct at issue; and (3) Exhibit 4 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must release incident report number 03-22725 if none of the offenders was ten years of age or older and under seventeen years of age at the time of the conduct at issue.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/rm

Ms. Judith N. Benton - Page 4

Ref: ID# 797452

Enc. Submitted documents

c: Requestor
(w/o enclosures)