



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 12, 2020

Mr. Eric Gutierrez  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2020-04329

Dear Mr. Gutierrez:

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# 812182 (ORR# 19-1026-10976).

The El Paso Police Department (the "department") received a request for information pertaining to a specified address. The department 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 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 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.

Fam. Code § 261.201(a). The department asserts the submitted information was used or developed in investigations under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Upon review, we find, with the exception of incident report number 13-035276, the submitted 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 this information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>1</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we conclude the department has not established incident report number 13-035276 was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. Therefore, this information is not confidential under section 261.201 of the Family Code, and the department may not withhold it under section 552.101 of the Government Code on that ground.

Section 552.101 of the Government Code also 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) 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.

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

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<sup>1</sup> As our ruling is dispositive, we do not address the other arguments of the department to withhold this information.

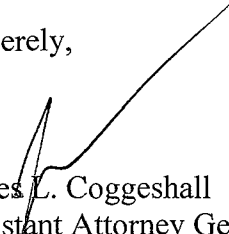
than seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find incident report number 13-035276 involves a juvenile offender, so as to fall within the scope of section 58.008(b). The exceptions in section 58.008 do not appear to apply. Therefore, the department must withhold incident report number 13-035276 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

In summary, the department must withhold incident report number 13-035276 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

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/mo

Ref: ID# 812182

Enc. Submitted documents

c: Requestor  
(w/o enclosures)