



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 23, 2020

Ms. Judy Hickman
Assistant Supervisor
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2020-08884

Dear Ms. Hickman:

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# 818182.

The Beaumont Police Department (the "department") received a request for information related to a specified incident involving a named individual. The department claims the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions the department claims 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. Section 552.101 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.

Fam. Code § 58.008(b); *see also id.* § 51.03(a) (defining “delinquent conduct” 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. 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 note section 58.008(b) applies only to law enforcement records that involve a juvenile as a suspect, offender, or defendant. Section 58.008(b) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party. The department argues the submitted information falls within the scope of section 58.008(b) of the Family Code. Upon review, we find the submitted information does not list a juvenile as a suspect, offender, or defendant. Thus, the department has not demonstrated the submitted information involves juvenile conduct for purposes of section 58.008(b) of the Family Code. Accordingly, the department may not withhold any portion of the submitted information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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, 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). The submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the department. *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). Accordingly, we find this information is subject to chapter 261 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440

at 2 (1986) (predecessor statute). Section 261.201(a), however, also provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a).

Chapter 411 of the Government Code constitutes “applicable state law” in this instance. The requestor is a representative of the Texas Department of Insurance (the “TDI”). Section 411.106 of the Government Code provides the TDI is entitled to obtain criminal history record information (“CHRI”) maintained by the Texas Department of Public Safety (“DPS”) that relates to a person who is an applicant for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the TDI to engage in an activity regulated under the Insurance Code; or a corporate officer of an insurance company regulated by the TDI. Gov’t Code §§ 411.106(a). Section 411.087 of the Government Code provides an agency that is entitled to obtain CHRI from DPS is also authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency[.]” *Id.* § 411.087. CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). Thus, when read together, sections 411.087 and 411.106 of the Government Code may grant the TDI a right of access to CHRI in the submitted information.

We are unable to determine whether the named individual is a person who is an applicant for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the TDI to engage in an activity regulated under the Insurance Code; or is a corporate officer of an insurance company regulated by the TDI. Thus, we must rule conditionally. Accordingly, if the department determines the named individual is a person who is an applicant for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the TDI to engage in an activity regulated under the Insurance Code; or is a corporate officer of an insurance company regulated by the TDI, and if the department determines release of the information at issue is consistent with the purposes of the Family Code, then the requestor has a right of access to CHRI about the individual pursuant to sections 411.087 and 411.106 of the Government Code. In that instance, the department must release the information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, and must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the department determines the named individual is not a person who is an applicant for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the TDI to engage in an activity regulated under the Insurance Code; or is not a corporate officer of an insurance company regulated by the TDI, or if the department determines release of the CHRI is not consistent with the purposes of the Family Code, 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 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jxd

Ref: ID# 818182

Enc. Submitted documents

c: Requestor
(w/o enclosures)