



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 27, 2020

Ms. Katheryne Ellison  
Assistant General Counsel  
Houston Independent School District  
4400 West 18th Street  
Houston, Texas 77092-8501

OR2020-09475

Dear Ms. Ellison:

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# 819158 (File No. WP010720).

The Houston Independent School District (the "district") received a request for specified information related to arrests of district students by on-campus police officers during a certain time period. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2020-07447 (2020). In that ruling, we determined the district must withhold the information marked pursuant to section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code and the district must withhold the information we marked pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. You indicate the law, facts, and circumstances on which the prior ruling was based have not changed. Thus, the district must continue to rely on Open Records Letter No. 2020-07447 as a previous determination and withhold the information at issue in

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<sup>1</sup> 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.

accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider your argument for the submitted information not subject to the previous ruling.

Section 552.101 of the Government Code excepts from public 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 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. 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). Upon review, we find a portion of the submitted information involves juvenile offenders, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply; therefore, with the exception of the information we marked for release, the district must withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, we find you have failed to demonstrate any portion of the information we have marked for release depicts an individual who is ten years of age or older and under the age of seventeen as a suspect or offender of delinquent conduct or conduct indicating a need for supervision. Thus, the remaining information is not confidential under section 58.008(b), and the district may not withhold it under section 552.101 on that ground.

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.

*Id.* § 261.201(a). Upon review, we find some of the remaining information may have been used or developed in investigations of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *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). However, we are unable to determine the ages of the victims. Accordingly, we must rule conditionally. To the extent the victims in the marked investigations were under eighteen years of age at the time of the offense, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, to the extent the victims were eighteen years of age or older at the time of the offense, the district may not withhold the marked information on this basis.

In summary, the district must continue to rely on Open Records Letter No. 2020-07447 as a previous determination and withhold the information at issue in accordance with that ruling. With the exception of the information we marked for release, the district must withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. To the extent the victims in the marked investigations were under eighteen years of age at the time of the offense, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district 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,

Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/be

Ref: ID# 819158

Enc. Submitted documents

c: Requestor  
(w/o enclosures)