



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 8, 2020

Ms. Kendra Walters
Counsel for the Beaumont Independent School District
Karczewski, Bradshaw, Spalding, Nichols, Lamp & Langlois
545 North 5th Street
Silsbee, Texas 77656

OR2020-10555

Dear Ms. Walters:

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# 820229.

The Beaumont Independent School District (the "district"), which you represent, received a request for information pertaining to fifteen specified case numbers. You state the district has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, 552.135, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request because it does not pertain to any of the case numbers specified in the request. This ruling does not address the public availability of the non-responsive information, which we have marked, and the district need not release it in response to the request.

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. This section 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 [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). We note some of the submitted reports relate to investigations of alleged or suspected child abuse or neglect conducted by the district's police department (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 section 261.201 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the district must withhold report numbers 18-0821, 18-0825, and 18-0826 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also 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)–(b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of title 3 of Family Code). Section

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 find some of the remaining reports involve 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, the district must withhold report numbers 18-0823, 18-0827, 19-0174, 19-0175, 19-0177, and 19-0178 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.² However, we find you have failed to demonstrate any of the remaining responsive information identifies 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. Therefore, the district may not withhold any of the remaining responsive information under section 552.101 on the basis of section 58.008.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining responsive information relates to closed criminal cases conducted by the department that did not result in convictions or deferred adjudications. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to the remaining responsive information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, the district may withhold the remaining responsive information under section 552.108(a)(2) of the Government Code.³

In summary, the district must withhold report numbers 18-0821, 18-0825, and 18-0826 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The district must withhold report numbers 18-0823, 18-0827, 19-0174, 19-0175, 19-0177, and 19-0178 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. With the exception of the basic

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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information, which must be released, the district may withhold the remaining responsive information under section 552.108(a)(2) of the Government 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,

Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/jxd

Ref: ID# 820229

Enc. Submitted documents

c: Requestor
(w/o enclosures)