



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 20, 2020

Ms. Janese Dudash
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2020-11387

Dear Ms. Dudash:

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# 822950 (ORR W097527).

The City of Fort Worth (the "city") received a request for all arrest records pertaining to a named individual. You state you will release some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim 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 information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part, the following:

- (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 We note although you raise section 552.108 of the Government Code, you make no arguments to support this assertion. Therefore, we assume you have withdrawn your claim that this exception applies to the submitted information. See Gov't Code §§ 552.301, .302.

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect by the city's police department (the "department") and falls within the scope of section 261.201 of the Family Code. *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). 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 regulation exists. Given that assumption, we determine the city must generally withhold report number 05-079660 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Upon review, however, we find you have failed to demonstrate the remaining information is a report of child abuse or neglect or was used or developed in an investigation under chapter 261. Therefore, we conclude section 261.201 is not applicable to the remaining information and it may not be withheld on that basis. However, we note section 261.201(a) provides information encompassed by that section may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." *Id.* § 261.201(a). Section 58.008 of the Family Code constitutes applicable state law for purposes of section 261.201(a). Accordingly, we will address the applicability of section 58.008 to the submitted information.

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 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 id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). The submitted information consists of incident reports involving juvenile offenders, so as to fall within the scope of section 58.008(b). Thus, section 58.008(b) is generally applicable to the submitted information.

However, the requestor is a representative of the United States District Court Federal Probation System. Section 58.008(d)(2) of the Family Code gives a “criminal justice agency,” as defined by section 411.082 of the Government Code a right of access to juvenile law enforcement records. *See id.* § 58.008(d)(2). Section 411.082 of the Government Code defines a “criminal justice agency” as including “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” Gov’t Code § 411.082(3)(A). Thus, we find the requestor is requesting the information on behalf of a criminal justice agency as provided by section 58.008(d) of the Family Code. Accordingly, the requestor generally has a right of access to the submitted information under section 58.008(d). However, as discussed above, report number 05-079660 is also subject to section 261.201(a) of the Family Code, and records subject to section 261.201 may be disclosed only under applicable state law and for purposes consistent with the Family Code. *See* Fam. Code § 261.201(a). Section 58.008(d)(2) is applicable state law allowing disclosure to the requestor. However, the city must determine whether releasing report number 05-079660 to this requestor is consistent with the Family Code. Accordingly, if the city determines the requestor intends to use report number 05-079660 for purposes consistent with the Family Code, then the city must release this report in its entirety pursuant to section 58.008(d)(2) of the Family Code. *See id.* § 261.201(b)-(g), (k), (l) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute). Conversely, if the city determines the requestor does not intend to use report number 05-079660 for purposes consistent with the Family Code, then the city must withhold the information at issue in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Regardless, the city must release the remaining report in its entirety pursuant to section 58.008(d)(2) 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,

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/eb

Ref: ID# 822950

Enc. Submitted documents

c: Requestor
(w/o enclosures)