



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 21, 2020

Mr. L. Brian Narvaez  
Counsel for the City of McKinney  
Brown & Hoffmeister, L. L. P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2020-18198

Dear Mr. Narvaez:

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# 837515 (ORR# P014809).

The City of McKinney (the "city"), which you represent, received a request for information pertaining to all arrests made during a specified period of time. The city claims some of 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. Section 552.101 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* Fam. Code § 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 ten years old and less 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). The city asserts the information it has marked under section 58.008 involves delinquent conduct or conduct indicating a need for supervision. However, we are unable to determine the ages of the offenders at issue. Accordingly, we must rule conditionally. If the offenders at issue in the information marked under section 58.008 were ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the city must withhold this information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the offenders were not ten years of age or older and under seventeen years of age at the time of the conduct, then the city may not withhold the information marked on that basis.

Section 552.101 of the Government Code also 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.

*Id.* § 261.201(a). For purposes of section 261.201, a child is defined as “a 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.” *See id.* § 101.003(a). The city asserts the information it has marked under section 261.201 was used or developed in investigations

by the city's police department (the "department") under chapter 261. *See id.* § 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 at issue. Thus, we must rule conditionally. 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 rule exists. Consequently, if the victims at issue in the information marked under section 261.201(a) were under eighteen years of age at the time of the offenses at issue, then the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the victims were eighteen years of age or older at the time of the offenses, then the city may not withhold the information marked on that basis.

In summary, the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code if the offenders at issue in that information were ten years of age or older and under seventeen years of age at the time of the conduct at issue. The city must also withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code if the victims at issue in that information were under eighteen years of age at the time of the offenses at issue. The city 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,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/mo

Ref: ID# 837515

c: Requestor