



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 14, 2020

Mr. Nacer Aounallah  
Counsel for the City of Harlingen  
Denton, Navarro, Rocha, Bernal & Zech  
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Harlingen, Texas 78550-9165

OR2020-20493

Dear Mr. Aounallah:

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# 839145.

The City of Harlingen (the "city"), which you represent, received a request for specified information related to arrests 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 information.

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 some of the submitted information involves delinquent conduct or conduct indicating a need for supervision. However, although we are able to determine the ages of the offenders at the time of arrest, we are unable to determine the ages of the offenders at the time of the conduct that led to arrest. Accordingly, we must rule in the alternative. To the extent any portion of the submitted information, a representative sample of which we marked, involves an offender who was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then, as it does not appear any of the exceptions in section 58.008 apply, the city must withhold that information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.<sup>1</sup> However, to the extent the information at issue does not involve an offender who was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the information does not involve juvenile conduct for purposes of section 58.008(b) of the Family Code and it may not be withheld 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.

*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

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<sup>1</sup> In this instance, as our ruling is dispositive, we need not address your argument against disclosure of this information.

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 any portion of the remaining information, a representative sample of which we marked, involves a victim of alleged abuse or neglect who was a child at the time of the incident at issue, the city must withhold that information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup> Conversely, to the extent the information at issue does not involve a victim of alleged abuse or neglect who was a child at the time of the incident at issue, the information is not confidential under section 261.201 of the Family Code and the city may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, we find portions of the remaining information relate to incidents involving sexual assault or other sex-related offenses. Therefore, to the extent any of the remaining information consists of the home address of a victim of sexual assault or other sex-related offense, the city must withhold this information, a representative sample of which we marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any portion of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent any portion of the submitted information, a representative sample of which we marked, involves an offender who was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the city must withhold that information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. To the extent any portion of the remaining information, a representative sample of which we marked, involves a victim of alleged abuse or neglect who was a child at the time of the incident at issue, the city must withhold that information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent any of the remaining information, a representative sample of which we marked, consists of the home address of a victim of sexual assault or other

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<sup>2</sup> In this instance, as our ruling is dispositive, we need not address your argument against disclosure of this information.

sex-related offense, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. 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,

Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/mo

Ref: ID# 839145

Enc. Submitted documents

c: Requestor  
(w/o enclosures)