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ATTORNEY GENERAL OF TEXAS

October 23, 2020

Mr. Daniel J. Olds
Counsel for the City of Lakeway
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OR2020-26748

Dear Mr. Olds:

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# 849803.

The City of Lakeway (the "city"), which you represent, received a request for all records pertaining to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the present request because it was created after the city received the present request or it does not consist of information requested by the requestor. This ruling does not address the public availability of the non-responsive information, and the city need not release it in response to this request.

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 made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides, in relevant part:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). We note report numbers 16-01041 and 20-016457 were used or developed in investigations by the city's police department (the "department") of alleged 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 of Family Code). You do not indicate the department has adopted any rules that would permit the release of this information. Accordingly, we find report numbers 16-01041 and 20-016457 are subject to chapter 261 of the Family Code. We note the requestor is a parent of the child victims listed in the reports at issue. However, the requestor is alleged to have committed the alleged abuse or neglect in report number 16-01041. Thus, the requestor does not have a right of access to report number 16-01041 under section 261.201(k). *Id.* § 261.201(k). The city must withhold report number 16-01041 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ The requestor is not accused of committing the alleged or suspected child abuse or neglect in report number 20-016457. Therefore, the city may not withhold report number 20-016457 from the requestor on the basis of section 261.201(a) of the Family Code. *See id.* § 261.201(k). Section 261.201(l)(2), however, states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we will consider your arguments for report number 20-016457.

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of this 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 (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise 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.

...

(d) Law enforcement records concerning a child may be inspected or copied by:

(1) a juvenile justice agency, as defined by Section 58.101;

(2) a criminal justice agency, as defined by Section 411.082, Government Code;

(3) the child; or

(4) the child's parent or guardian.

(e) Before a child or a child's parent or guardian may inspect or copy a record concerning the child under Subsection (d), the custodian of the record shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under [the Act] or any other law.

Id. § 58.008(b), (d), (e); *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). We find some of the remaining 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 to report numbers 20-0020 and 20-00173. Therefore, the city must withhold report numbers 20-00020 and 20-00173 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.² In this instance, however, the requestor is the parent of one of the juvenile offenders involved in the remaining information that is subject to section 58.008. As such, the requestor has a right to inspect juvenile law enforcement records concerning this juvenile pursuant to section 58.008(d) of the Family Code. *See id.* § 58.008(d). Nevertheless, we note section 58.008(e)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor’s child must be redacted. *See id.* § 58.008(e)(1). Further, section 58.008(e)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. *See id.* § 58.008(e)(2). Thus, we will consider the city’s arguments under section 552.108 of the Government Code with respect to the information at issue.

Section 552.108(a) of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov’t Code § 552.108(a)(1), (2). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with the detection, investigation or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Further, a governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov’t Code §§ 552.108(a)(2), .301(e)(1)(A); Open Records Decision No. 434 (1986). You state, and submit documentation demonstrating, the responsive information in Exhibit B pertains to pending criminal investigations or prosecutions. Based upon our review, we conclude the release of the responsive information in Exhibit B would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex.

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

1976). Thus, section 552.108(a)(1) is applicable to the responsive information in Exhibit B. You also state, and submit documentation demonstrating, the remaining responsive information in Exhibit C pertains to closed criminal investigations that concluded in results other than conviction or deferred adjudication. Upon review, we find section 552.108(a)(2) is applicable to the remaining responsive information in Exhibit C.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identity of an arrestee and the identities of the complainants, but does not include the identities of any suspects who are not arrested, dates of birth, social security numbers of individuals other than an arrestee, or telephone numbers. See ORD 127 at 3-4. With the exception of basic information, which must be released, the city may withhold the responsive information in Exhibit B under section 552.108(a)(1) of the Government Code and the remaining responsive information in Exhibit C under section 552.108(a)(2) of the Government Code.³ However, as noted above, section 58.008(e)(1) states any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor's child shall be withheld from disclosure. Fam. Code § 58.008(e)(1). Accordingly, in releasing the basic information, the city must withhold the identities of the other juvenile arrestees, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code.

In summary, the city must withhold report number 16-01041 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold report numbers 20-00020 and 20-00173 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. With the exception of basic information, which must be released, the city may withhold the responsive information in Exhibit B under section 552.108(a)(1) and the remaining responsive information in Exhibit C under section 552.108(a)(2) of the Government Code. In releasing the basic information, the city must withhold the identities of the other juvenile arrestees, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code.⁴

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.

³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

⁴ As noted above, the requestor has a right of access to the information being released in this instance. See Fam. Code §§ 58.008(d), 261.201(k). If the city receives another request for this information from a different requestor, the city must again seek a ruling from this office. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/gw

Ref: ID# 849803

Enc. Submitted documents

c: Requestor
(w/o enclosures)