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ATTORNEY GENERAL OF TEXAS

November 30, 2020

Ms. Stacie S. White
Counsel for the Town of Flower Mound
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2020-29634

Dear Ms. White:

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# 855095.

The Flower Mound Police Department (the "department"), which you represent, received two requests from the same requestor for information pertaining to a specified incident. You inform us the department will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and Open Records Decision 684 (2009).¹ You claim 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 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:

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general opinion.

(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 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 the submitted information involves a juvenile offender, 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 department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

However, we note the requestor represents Perspecta and indicates it is working with the Defense Counterintelligence and Security Agency (“DCSA”). The requestor further indicates they are conducting a background investigation for a national security or public trust position. Executive Order Number 13869 transfers the responsibility of background investigations from the Office of Personnel Management to the Department of Defense (“DoD”). Executive Order No. 13869. The DSCA is a component of the DoD and is the primary federal entity responsible for conducting background investigation for the federal government. Exec. Order No. 13869, § 2(c)(i), (iii). As a component of a covered agency, the DSCA has a right of access to the criminal history record information (“CHRI”) of state and local criminal justice agencies when it receives the consent of the individual being investigated for release of such information. *See* 5 U.S.C. § 9101(b)(1), (c); *id.* § 9101(a)(6)(A) (defining “covered agency” to include DoD). CHRI is defined as “information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision and release[,]” but does not include “identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system.” *Id.* § 9101(a)(2).

In this instance, the requestor has submitted written consent from the individual under investigation for the release of that individual's CHRI. Furthermore, federal law provides the DCSA's right of access to CHRI preempts state confidentiality provisions. *Id.* § 9101(b)(4) (section 9101 "shall apply notwithstanding any other provision of law of any State"); *see also English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (noting state law is preempted to extent it actually conflicts with federal law); *see also La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369, (1986) (noting federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Accordingly, we conclude notwithstanding section 58.008 of the Family Code, the DCSA has a right of access to CHRI regarding the named individual. Thus, the department must release CHRI relating to the named individual and must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.008 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/mo

Ref: ID# 855095

Enc. Submitted documents

c: Requestor
(w/o enclosures)