



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2020

Mr. Thomas L. McMillian
Assistant City Attorney
City of Amarillo
200 Southeast Third Avenue
Amarillo, Texas 79101-1514

OR2020-30331

Dear Mr. McMillian:

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# 856714 (ORR# 20-2638).

The Amarillo Police Department (the "department") received a request for two specified incident reports. The department claims 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. This section 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.

Fam. Code § 261.201(a). The department asserts some of the submitted information is confidential under section 261.201. However, we find the department has not established any of the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code or consists of a report of alleged or suspected abuse or neglect. *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). Therefore, the submitted information is not confidential under section 261.201(a) of the Family Code and the department may not withhold any of it under section 552.101 of the Government Code on that ground.

Section 552.101 of the Government Code also 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.

Id. § 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 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). We find incident report number 2004-0020144 involves a juvenile offender, so as to fall within the scope of section 58.008(b). Although the requestor is a parent of the juvenile offender at issue, the juvenile offender is now an adult. Accordingly, the requestor does not have a right of access to this offender’s records under section 58.008(d). *See id.* § 58.008(d). Therefore, the department must withhold incident report number 2004-0020144 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The remaining information is not confidential under section 58.008(b) and the department may not withhold it under section 552.101 on that ground. Accordingly, the department 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/gw

Ref: ID# 856714

Enc. Submitted documents

c: Requestor
(w/o enclosures)