



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 20, 2022

Mr. Jeff Cornell
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2022-01663

Dear Mr. Cornell:

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# 927672.

The Mesquite Police Department (the "department") received a request for report number 15025362. The department states it will redact public citizens' dates of birth pursuant to Open Records Letter No. 2015-24970 (2015).¹ The department also states it will redact Federal Bureau of Investigation ("FBI") numbers pursuant to Open Records Letter No. 2012-07334 (2012).² The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims 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 information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

¹ Open Records Letter No. 2015-24970 authorizes the department to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

² Open Records Letter No. 2012-07334 authorizes the department to withhold FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law without requesting a ruling from this office. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

(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.

Fam. Code § 261.201(a), (k), (l). A portion of the submitted information, which we marked, relates to an investigation of alleged or suspected child abuse or neglect. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find the information we marked is generally subject to chapter 261 of the Family Code. However, we are unable to determine whether the requestor is a parent, managing conservator, or other legal representative of the child victim involved in the information we marked. We are also unable to determine the current age of the child victim involved in the information at issue. Thus, we must rule conditionally. We note the requestor is not alleged to have committed the abuse or neglect at issue. Thus, if the requestor is not a parent, managing conservator, or other legal representative of the child victim, or if the child victim at issue is now at least 18 years of age, then the requestor does not have a right of access to the information under section 261.201(k) of the Family Code, and the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, if the requestor is a parent, managing conservator, or other legal representative of the child victim involved in the information we marked and if the child victim is currently under 18 years of age, then pursuant to section 261.201(k), the information we marked may not be withheld from this requestor under section 552.101 of the Government Code on the

basis of section 261.201(a). *See id.* § 261.201(k). In that instance, pursuant to section 261.201(1)(2) of the Family Code, we will consider the applicability of additional exceptions to disclosure of the information we marked.

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 (c), 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[.]

Fam. Code § 58.008(b), (d); *see id.* § 51.03(a) (defining “delinquent conduct” 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). The information we marked involves delinquent conduct or conduct indicating a need for supervision. However, we are unable to determine the age of the offender at issue at the time of the conduct. Accordingly, we must rule in the alternative. If the offender at issue was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the information we marked involves a juvenile offender and section 58.008 is generally applicable to the information we marked. We note the juvenile offender at issue is now an adult. Thus, we find the requestor does not have a right

to inspect the information at issue under section 58.008(d) of the Family Code. Accordingly, in that instance, as it does not appear any of the exceptions in section 58.008 apply, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, if the offender involved in the information we marked was under ten years of age or was seventeen years of age or older at the time of the conduct, then the information we marked does not involve juvenile conduct for purposes of section 58.008(b) of the Family Code, and the department may not withhold the information we marked under section 552.101 of the Government Code on that basis.

In summary, if the requestor is not a parent, managing conservator, or other legal representative of the child victim involved in the information we marked, or if the child victim is now at least 18 years of age, then the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is a parent, managing conservator, or other legal representative of the child victim involved in the information we marked, and if the child victim is currently under 18 years of age, and if the offender involved in the information at issue was ten years of age or older and under seventeen years of age at the time of the conduct, then the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The department must release the remaining information to this requestor.³

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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/ba

³ We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.

Mr. Jeff Cornell - Page 5

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Enc. Submitted documents

c: Requestor
(w/o enclosures)