



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 8, 2022

Mr. L. Brian Narvaez
Counsel for the City of McKinney
Brown & Hoffmeister, L. L. P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2022-03462

Dear Mr. Narvaez:

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# 929906 (ORR# 21-1089).

The McKinney Police Department (the "department"), which you represent, received a request for information pertaining to a named individual. 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). Upon review, we find the submitted information was used or developed in investigations under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Thus, the information is within the scope of section 261.201 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, we find this information is generally confidential under section 261.201(a).

Section 552.101 of the Government Code also encompasses section 58.008 of the Family Code, which provides, in part, the following:

(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:

...

(2) a criminal justice agency, as defined by Section 411.082, Government Code[.]

Id. § 58.008(b), (d)(2); *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). 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 Exhibit B and incident report number 17-007346 involves juvenile offenders, so as to fall within the scope of section 58.008(b). The exceptions in section 58.008 do not appear to apply. Therefore, this information is generally confidential under section 58.008(b).

The requestor is a representative of the Little Elm Police Department. Section 58.008(d)(2) of the Family Code gives a “criminal justice agency, as defined by section 411.082 of the Government Code a right of access to juvenile law enforcement records. *See id.* § 58.008(d)(2). Section 411.082 of the Government Code defines a “criminal justice agency” as including “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” Gov’t Code § 411.082(3)(A). Thus, we find the requestor is requesting the information on behalf of a criminal justice agency as provided by section 58.008(d) of the Family Code. Therefore, the requestor generally has a right of access under section 58.008(d)(2) to the information at issue. Accordingly, the department may not withhold the information subject to section 58.008(b) under section 552.101 on that ground. Nonetheless, as discussed above, the information is also subject to section 261.201(a) of the Family Code, and records subject to section 261.201 may be disclosed only under applicable state law and for purposes consistent with the Family Code. *See* Fam. Code § 261.201(a). Section 58.008(d)(2) is applicable state law allowing disclosure to the requestor. Thus, if the department determines the requestor intends to use Exhibit B and incident report number 17-007346 for purposes consistent with the Family Code, then the department must release this information pursuant to section 58.008(d)(2) of the Family Code. *See id.* § 261.201(b)-(g), (k), (1) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute). Conversely, if the department determines the requestor does not intend to use Exhibit B and incident report number 17-007346 for purposes consistent with the Family Code, then the department must withhold this information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] any criminal history record information [(“CHRI”)] maintained by [DPS] about a person.” *See* Gov’t Code § 411.089(a). In addition, section 411.087(a)(2) of the Government Code provides the following:

- (a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from [DPS CHRI] maintained by [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, to the extent the requestor represents a “criminal justice agency,” the requestor is authorized to obtain CHRI concerning the named individual from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See Gov’t Code* §§ 411.083(c), .087(a)(2).

As noted above, the requestor represents a criminal justice agency as defined by section 411.082, and we understand she intends to use the CHRI for a criminal justice purpose. Accordingly, if the department determines release of the CHRI in incident report number 21-007038 is consistent with the Family Code, then the department must release the CHRI pursuant to section 411.087(a)(2) of the Government Code, but withhold the remaining information in this report under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the department determines release of the CHRI is not consistent with the Family Code, then the department must withhold incident report number 21-007038 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

In summary, if the department determines the requestor intends to use Exhibit B and incident report number 17-007346 for purposes consistent with the Family Code, then the department must release this information pursuant to section 58.008(d)(2) of the Family Code. Conversely, if the department determines the requestor does not intend to use Exhibit B and incident report number 17-007346 for purposes consistent with the Family Code, then the department must withhold this information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the department determines release of the CHRI in incident report number 21-007038 is consistent with the Family Code, then the department must release the CHRI pursuant to section 411.087(a)(2) of the Government Code, but withhold the remaining information in this report under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the department determines release of the CHRI is not consistent with the Family Code, then the department must withhold incident report number 21-007038 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 929906

Enc. Submitted documents

c: Requestor
(w/o enclosures)