



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 10, 2022

Mr. Siang L. Sang
Assistant City Attorney
City of Fort Worth
200 Texas Street, Third Floor
Fort Worth, Texas 76102

OR2022-07220

Dear Mr. Sang:

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# 935645 (PIR No. E000734-121421).

The City of Fort Worth (the "city") received a request for two specified reports involving a named individual. 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 261.201(a) of the Family Code, which reads as follows:

(a) [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 agree report number 100023549 was used or developed in 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) (defining “abuse” for purposes of chapter 261 of the Family Code). Thus, this information is within the scope of section 261.201(a). The city does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we find report number 100023549 is generally confidential under section 261.201(a) of the Family Code. Nevertheless, we will address the applicability of section 58.008 of the Family Code to this report, as well as to the remaining information.

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

(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 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 report number 100056257 involves a juvenile offender, so as to fall within the scope of section 58.008(b).

However, we note the requestor is a representative of the Collin County Criminal District Attorney’s Office. 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 has a right of access under section 58.008(d) to report number 100056257 and the city may not withhold report number 100056257 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. Accordingly, the city must release report number 100056257 pursuant to section 58.008(d) of the Family Code.

As discussed above, report number 100023549 is 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). Report number 100023549 also involves a juvenile offender, so as to fall within the scope of section 58.008(b) of the Family Code. Section 58.008(d)(2) of the Family Code is applicable state law allowing disclosure to the requestor. Accordingly, if the city determines the requestor intends to use report number 100023549 for purposes consistent with the Family Code, then the city must release this report pursuant to section 58.008(d)(2) of the Family Code. *See id.* § 261.201(b)-(g), (k), (l) (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 city determines the requestor does not intend to use report number 100023549 for purposes consistent with the Family Code, then the city must withhold this report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

In summary, the city must release report number 100056257 pursuant to section 58.008(d) of the Family Code. If the city determines the requestor intends to use report number 100023549 for purposes consistent with the Family Code, then the city must release this report pursuant to section 58.008(d)(2) of the Family Code. Conversely, if the city determines the requestor does not intend to use report number 100023549 for purposes consistent with the Family Code, then the city must withhold this report 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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/jxd

Ref: ID# 935645

Enc. Submitted documents

c: Requestor
(w/o enclosures)