



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 1, 2022

Ms. Chelsey Heil
Records Supervisor
City of Leander
P.O. Box 319
Leander, Texas 78646

OR2022-33879

Dear Ms. Heil:

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# 981326.

The Leander Police Department (the "department") received a request for information pertaining to a specified address during a defined time period. You state you released some information. You state you will redact certain information pursuant to section 552.130(c) of the Government Code.¹ You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

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

¹ Section 552.130(c) 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).

² We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Code § 552.101. This section encompasses information made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides, in relevant part:

(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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). We note some of the submitted information was used or developed in investigations by the city's police department (the "department") of alleged child abuse or neglect under chapter 261 of the Family Code. *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 of Family Code). You do not indicate the department has adopted any rules that would permit the release of this information. Accordingly, we find portions of the submitted information are subject to chapter 261 of the Family Code. We note the requestor is a parent of the child victim listed in the reports at issue. However, the requestor is alleged to have committed the alleged abuse or neglect

in call report numbers 2204-3018, 2207-0610, and 2207-0642. Thus, the requestor does not have a right of access to report numbers 2204-3018, 2207-0610, and 2207-0642 under section 261.201(k). *Id.* § 261.201(k). Therefore, the city must withhold report numbers 2204-3018, 2207-0610, and 2207-0642 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³ The requestor is not accused of committing the alleged or suspected child abuse or neglect in the remaining information. Therefore, the city may not withhold the remaining information from the requestor on the basis of section 261.201(a) of the Family Code. *See id.* § 261.201(k). Section 261.201(l)(2), however, states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we will consider your arguments for the remaining information at issue.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states the remaining information relates to closed criminal investigations that did not result in convictions or deferred adjudications. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the remaining information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code or dates of birth. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code.⁴

In summary, the city must withhold report numbers 2204-3018, 2207-0610, and 2207-0642 under section 552.101 of the Government Code in conjunction with section 261.201 of the

³ As our ruling is dispositive, we need not address your arguments against disclosure of this information.

⁴ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information or the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e). Additionally, we note the requestor has a special right of access to some of the information at issue. *See Gov't Code* § 552.023 (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); *see also* Fam. Code § 261.201(k). If you receive another request for this information from a different requestor, you must again seek a ruling from this office. *See Gov't Code* §§ 552.301, .302; Open Records Decision No. 673 (2001).

Family Code. With the exception of the basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(2) of the Government 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,

Pearlie Gault
Assistant Attorney General
Open Records Division

PG/pt

Ref: ID# 981326

Enc. Submitted documents

c: Requestor
(w/o enclosures)