



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 10, 2015

Ms. Mary Ann Powell
Counsel for the City of Stafford
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2015-18877

Dear Ms. Powell:

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# 579590 (ORR# COS15-040).

The Stafford Police Department (the "department") received a request for incident reports related to the requestor. You state the department is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ You further state the department is withholding certain information pursuant to Open Records Decision No. 684 (2009).² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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), (e).

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

(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 Youth Commission, 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). You argue each of the submitted reports is subject to section 261.201 of the Family Code. We note report numbers 11-0222PD, 11-09933PD, 11-0999PD, and 12-1894PD pertain to cases of assault involving two adults. Although you argue these reports are subject to chapter 261 of the Family Code because the incidents at issue were reported to the Child Protective Services Division of the Department of Family and Protective Services (“CPS”), we find you have failed to demonstrate how any portion of the information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established the information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes

of Fam. Code ch. 261). Therefore, the department may not withhold report numbers 11-0222PD, 11-09933PD, 11-0999PD, and 12-1894PD under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Upon review, however, we find report numbers 15-1805PD, 11-1702PD, and 12-1833PD consist of reports of alleged or suspected child abuse or neglect made to the department and of files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under chapter 261 of the Family Code. *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 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find report numbers 15-1805PD, 11-1702PD, and 12-1833PD are subject to chapter 261 of the Family Code. We note the requestor is a parent of a child victim listed in each of these reports. However, we note the requestor is alleged to have committed the suspected abuse or neglect at issue in report number 11-1702PD. Further, the department is not the investigating agency in report number 12-1833PD for purposes of section 261.201(k) of the Family Code. Thus, the requestor does not have a right of access under section 261.201(k) to report numbers 11-1702PD and 12-1833PD. *See id.* § 261.201(k). Therefore, we conclude the department must withhold report numbers 11-1702PD and 12-1833PD under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note the requestor is not alleged to have committed the abuse or neglect at issue in report number 15-1805PD. Thus, pursuant to section 261.201(k), report number 15-1805PD 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). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider your remaining arguments against disclosure of report number 15-1805PD, as well as the remaining information.

Section 552.101 of the Government Code also encompasses juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Such records are confidential under section 58.007(c) of the Family Code, which reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

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

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from 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 Subchapters B, D, and E.

Id. § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Report number 15-1805PD involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, the department must withhold report number 15-1805PD under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.⁴

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). You state report numbers 11-0222PD, 11-0993PD, 11-0999PD, and 12-1894PD relate to closed cases that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to report numbers 11-0222PD, 11-0993PD, 11-0999PD, and 12-1894PD.

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 the basic information does not include dates of birth. *See id.* Thus, with the exception of the basic information,

⁴As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

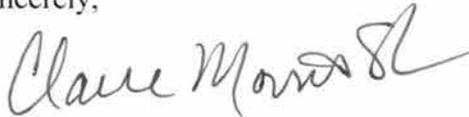
the department may withhold report numbers 11-0222PD, 11-0993PD, 11-0999PD, and 12-1894PD under section 552.108(a)(2) of the Government Code.⁵

In summary, the department must withhold report numbers 11-1702PD and 12-1833PD under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold report number 15-1805PD under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of the basic information, which must be released, the department may withhold report numbers 11-0222PD, 11-0993PD, 11-0999PD, and 12-1894PD 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 579590

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.