



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2016

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185

OR2016-12713

Dear Ms. Graham:

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# 613024.

The Mesquite Police Department (the "department") received a request for two incident reports. You state you will redact public citizens' dates of birth pursuant to the previous determination issued in Open Records Letter No. 2015-24970 (2015) and social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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. Section 552.101 of the Government Code encompasses information protected by other statutes such as section 261.201 of the Family Code, which provides:

¹Open Records Letter No. 2015-24970 authorized the department to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

(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). You assert, and we agree, Exhibit 2 was used or developed in an alleged or suspected child abuse investigation by the department. *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). Accordingly, we find Exhibit 2 is subject to chapter 261 of the Family Code. However, the requestor is a parent of the child victim to whom the information at issue relates, and is not alleged to have committed the abuse. *See id.* § 261.201(k). Thus, pursuant

to section 261.201(k), the information at issue may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a) of the Family Code. Section 261.201(1)(2), however, provides that any information excepted from disclosure under the Act or other law must be withheld. *See id.* § 261.201(1)(2). Thus, we will address your remaining arguments against disclosure for the information at issue.

Section 552.101 of the Government Code also encompasses section 58.007 of Family Code, which provides, in relevant part:

(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:

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). 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 when the conduct occurred. *See id.* § 51.02(2). You assert Exhibits 2 and 3 are confidential pursuant to section 58.007(c). Upon review, we find Exhibit 2 involves delinquent conduct or conduct indicating a need for supervision not pertaining to the requestor’s child occurring on or after September 1, 1997. However, we are unable to determine the listed suspect’s age at the time of the conduct at issue in Exhibit 2. Accordingly, we must rule in the alternative. If the suspect at issue was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then, as it does not appear any of the exceptions in section 58.007 apply, the department must withhold Exhibit 2 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c). However, if the suspect at issue was under ten years of age or was seventeen years of age or older at the time of the conduct, then the information does not involve juvenile conduct for purposes of section 58.007(c), and no portion of the information at issue may be withheld under section 552.101 of the Government Code on that basis.

Additionally, upon review, we find Exhibit 3 involves juvenile delinquent conduct or conduct indicating a need for supervision occurring on or after September 1, 1997. Therefore, Exhibit 3 is generally confidential under section 58.007(c). We note the requestor is a parent of the juvenile offender in Exhibit 3. Therefore, the requestor has a right to inspect juvenile law enforcement records concerning his juvenile child pursuant to section 58.007(e) of the Family Code. *See id.* § 58.007(e). We note section 58.007(j)(1) of the Family Code provides any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). For purposes of section 58.007(j)(1), we conclude a juvenile victim or witness is a person who is under eighteen years of age. Accordingly, within Exhibit 3, the department must withhold the identifying information of the juvenile witnesses you have marked and we have marked under section 58.007(j)(1) in conjunction with section 552.101. Further, section 58.007(j)(2) of the Family Code provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, we will address your remaining argument against disclosure of this information.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than 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.*; *see also id.* § 552.301(e)(1)(A). You state Exhibit 2 relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. Based on your representation, we find section 552.108(a)(2) is applicable to Exhibit 2.

However, section 552.108(a)(2) of the Government Code 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559, 560-61 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the department may withhold Exhibit 2 from disclosure under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). Accordingly, the department must withhold the motor vehicle record information you have marked within Exhibit 3 under section 552.130.

In summary, if the suspect 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 department must withhold Exhibit 2 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the suspect at issue was under ten years of age or was seventeen years of age or older at the time of the conduct, then, with the exception of basic information, which must be released, the department may withhold Exhibit 2 from disclosure under section 552.108(a)(2) of the Government Code. Within Exhibit 3, the department must withhold (1) the identifying information of the juvenile witnesses you have marked and we have marked under section 58.007(j)(1) of the Family Code in conjunction with section 552.101 of the Government Code, and (2) the motor vehicle record information you have marked under section 552.130 of the Government Code. The remaining information must be released.²

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.

²We note the requestor has a special right of access to the information being released under sections 58.007(e) and 261.201(k) of the Family Code. *See* Fam. Code §§ 58.007(e), 261.201(k). Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,

A handwritten signature in black ink, appearing to read "Cole Hutchison", with a long horizontal flourish extending to the right.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/akg

Ref: ID# 613024

Enc. Submitted documents

c: Requestor
(w/o enclosures)