



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 26, 2016

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2016-21666

Dear Mr. Ramirez:

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# 628158.

The Lower Colorado River Authority (the "authority") received a request for information pertaining to a specified incident involving the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 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. Section 552.101 encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Fam. Code § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). The relevant part of section 58.007(c) 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:

- (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). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2). We have reviewed the submitted information and find it does not involve a juvenile suspect or offender who was ten years of age or older and under seventeen years of age at the time of the conduct at issue. Accordingly, we find that you have not demonstrated the applicability of section 58.007(c) of the Family Code. Thus, the authority may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses section 58.00711 of the Family Code. Section 58.00711 addresses the confidentiality of records relating to juveniles charged with fine-only misdemeanors and provides:

- (a) This section applies only to a misdemeanor offense punishable by fine only, other than a traffic offense.
- (b) Except as provided by Article 45.0217(b), Code of Criminal Procedure, all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is charged with, is convicted of, is found not guilty of, had a charge dismissed for, or is granted deferred disposition for an offense described by Subsection (a) are confidential and may not be disclosed to the public.

Fam. Code § 58.00711. For purposes of section 58.00711, “child” means a person who is ten years of age or older and under seventeen years of age at the time of the conduct at issue. *See* Fam. Code § 51.02(2). As noted, we find the submitted information does not involve an offender who was ten years of age or older and under seventeen years of age at the time of the conduct at issue. Thus, the submitted information is not confidential pursuant to section 58.00711 and it may not be withheld under section 552.101 of the Government Code on that basis.

The authority asserts the submitted information is excepted from disclosure under section 552.108 of the Government Code. Initially, we consider the authority's assertion its Public Safety Department (the "department") qualifies as a law enforcement agency for purposes of section 552.108. Section 552.108 is applicable only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 at 2 (1988), 287 (1981). Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. *See* Open Records Decision No. 199 (1978). An agency that does not qualify as a law enforcement agency may claim, under certain limited circumstances, that section 552.108 protects records in its possession. *See, e.g.*, Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493, 272 (1981).

You inform us the authority is a "district" subject to the provision of chapter 49 of the Water Code. *See* Water Code § 49.001(a)(1) (defining "district" for purposes of the Water Code). Section 49.216(a) of the Water Code authorizes a district to "employ its own peace officers with power to make arrests when necessary to prevent or abate the commission of . . . any offense against the laws of the state." *Id.* § 49.216(a)(3). Article 2.12 of the Code of Criminal Procedure defines "peace officers" to include "officers commissioned by a water control and improvement district under Section 49.216[.]" Crim. Proc. Code art. 2.12(15). You indicate the submitted information was created by the department's peace officers in a law enforcement capacity. Having considered the submitted arguments and reviewed the submitted information, we conclude the authority has demonstrated its department is a law enforcement agency for purposes of section 552.108 of the Government Code. *See A&T Consultants v. Sharp*, 904 S.W.2d 668, 677-78 (Tex. 1995) (comptroller may withhold from disclosure audit papers pursuant to section 552.108 to protect the comptroller's interest in enforcing the tax laws); Open Records Decision Nos. 320 at 1 (1982) (Texas National Guard is law enforcement agency for purposes of statutory predecessor), 127 at 8 (1976) (arson investigation unit of fire department is law enforcement agency), 126 at 5 (1976) (Attorney General's Organized Crime Task Force is law enforcement agency).

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to a pending criminal investigation. Based on your representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536

S.W.2d 559 (Tex. 1976). Therefore, we agree section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d at 186-87. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which the authority must release, the authority may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 628158

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As we are able to resolve this issue under section 552.108, we do not address your remaining claim against disclosure of the submitted information, except to note basic information may not be withheld from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).