



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 24, 2017

Mr. John Saenz
Crime Records Office
McAllen Police Department
P. O. Box 220
McAllen, Texas 78505

OR2017-06062

Dear Mr. Saenz:

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# 650240.

The McAllen Police Department (the "department") received a request for information pertaining to a specified address during a specified time period. We understand you will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 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."¹ Gov't Code § 552.101. This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, 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,

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.

Fam. Code § 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). Exhibit E 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. Thus, we find Exhibit E is generally confidential pursuant to section 58.007(c) of the Family Code.

However, we note the requestor in this instance is a representative of the McAllen Housing Authority (the “housing authority”). The federal Housing Opportunity Program Extension Act of 1996 authorizes housing authorities to obtain criminal records of applicants and tenants. Section 1437d(q)(1)(A) of chapter 42 of the United States Code provides, “Notwithstanding any other provision of law, . . . the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, covered housing assistance for purposes of applicant screening, lease enforcement, and eviction.” 42 U.S.C. § 1437d(q)(1)(A). Section 1437d(q)(1)(C) provides, “[a] law enforcement agency described in subparagraph (A) shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.” *Id.* § 1437d(q)(1)(C). In Open Records Decision No. 655 (1997), this office concluded a local housing authority is a noncriminal justice agency authorized by federal statute to receive criminal history record information (“CHRI”). ORD 655 at 4. CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). The Department of Public Safety (the “DPS”) is required to provide CHRI to a noncriminal justice agency authorized to receive CHRI pursuant to a federal statute, executive order, or state statute. *Id.* § 411.083(b)(2). However, federal law limits the

purposes for which a public housing authority may request CHRI. The federal law provides, among other things, (1) public housing agencies may receive CHRI of adult and juvenile applicants or tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. *See* 42 U.S.C. § 1437d(q)(1)(A); ORD 655 at 3-5. Section 1437d(q)(1)(A) states a housing authority shall be provided access to the CHRI “[n]otwithstanding any other provision of law.” 42 U.S.C. § 1437d(q)(1)(A). Based on this language, we find section 1437d(q)(1)(A) prevails over section 58.007(c) of the Family Code, as well as section 552.108 of the Government Code. *Cf. Equal Employment Opportunity Comm’n v. City of Orange, Texas*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). However, as previously discussed, section 1437d(q)(1)(C) allows a housing authority to obtain access to juvenile CHRI “only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.” 42 U.S.C. § 1437d(q)(1)(C). Juvenile justice information is confidential but may be released to “a noncriminal justice agency authorized by federal statute or federal executive order to receive juvenile justice record information[.]” Fam. Code § 58.106(a)(3). Thus, the housing authority may obtain and use juvenile CHRI only in accordance with section 1437d(q)(1)(A). *See also* Gov’t Code § 411.084(2)(B) (stating CHRI may only be disclosed or used as authorized or directed by another statute).

In this instance, we are unable to determine if the requestor is seeking the release of CHRI of applicants or tenants for purposes of applicant screening, lease enforcement, or eviction. Consequently, if Exhibit E pertains to an applicant or tenant of public housing and the requestor intends to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, we conclude the department must release information to this requestor that shows the types of allegations made and whether there were arrests, informations, indictments, detentions, convictions, or other formal charges and their dispositions. In that instance, the department must withhold the remaining information in Exhibit E under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the department determines Exhibit E does not pertain to an applicant or tenant of public housing or the requestor does not intend to use the CHRI in the information for purposes of applicant screening, lease enforcement, or eviction, then the department must withhold Exhibit E in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

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 Exhibits B, C, and D relate to closed cases that did not result in convictions or deferred adjudications. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to Exhibits B, C, and D.

However, we note, and you acknowledge, 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 Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may generally withhold Exhibits B, C, and D under section 552.108(a)(2) of the Government Code.

As noted above, the requestor is with the housing authority and we are unable to determine if the requestor is seeking the release of CHRI of applicants or tenants for purposes of applicant screening, lease enforcement, or eviction. Consequently, if Exhibits B, C, and D pertain to an applicant or tenant of public housing and the requestor intends to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, then the department must release information to this requestor that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, with the exception of basic information, which must be released, the department may withhold the remaining information in Exhibits B, C, and D under section 552.108(a)(2) of the Government Code. However, if Exhibits B, C, and D do not pertain to an applicant or tenant of public housing or the requestor does not intend to use the CHRI in the information for purposes of applicant screening, lease enforcement, or eviction, then, with the exception of basic information, which must be released, the department may withhold Exhibits B, C, and D under section 552.108(a)(2) of the Government Code.

In summary, if Exhibits B, C, D, and E pertain to an applicant or tenant of public housing and the requestor intends to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, then the department (1) must release information to this requestor that shows the types of allegations made and whether there were arrests, informations, indictments, detentions, convictions, or other formal charges and their dispositions; (2) must withhold the remaining information in Exhibit E under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; and (3) with the exception of basic information, may withhold the remaining information in Exhibits B, C, and D under section 552.108(a)(2) of the Government Code. If Exhibits B, C, D, and E do not pertain to an applicant or tenant of public housing or the requestor does not intend to use the CHRI in the information for purposes of applicant screening, lease enforcement, or eviction, then the department (1) must withhold Exhibit E in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code and (2) with the exception of basic information, may withhold Exhibits B, C, and D under section 552.108(a)(2) of the Government Code. In either case, the department must release the basic information from Exhibits B, C, and D.

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/sb

Ref: ID# 650240

Enc. Submitted documents

c: Requestor
(w/o enclosures)