



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 25, 2017

Mr. Oscar G. Gabaldón, Jr.  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2017-24400

Dear Mr. Gabaldón:

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# 687257 (City ID# 17-1026-8868).

The El Paso Police Department (the "department") received a request for a specified case. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> 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 section 58.008 of the Family Code, which provides, in part:

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

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<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy and constitutional privacy for the submitted information, you provide no arguments explaining how these doctrines are applicable to the information at issue. Therefore, we assume you no longer assert these doctrines. *See* Gov't Code §§ 552.301, .302.

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the 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 Subsection (c) or Subchapter B, D, or E.

(d) Law enforcement records concerning a child may be inspected or copied by:

(1) a juvenile justice agency, as defined by Section 58.101;

(2) a criminal justice agency, as defined by Section 411.082, Government Code;

(3) the child; or

(4) the child's parent or guardian.

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

...

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

Act of May 28, 2017, 85th Leg., R.S., ch. 746 § 13, 2017 Tex. Sess. Law Serv. 3173, 3176-77 (Vernon) (to be codified at Fam. Code § 58.008(b), (d), (e)(2)); *see also* Fam. Code § 51.03(a) (defining "delinquent conduct" for purposes of title 3 of Family Code); Act of May 19, 2017, 85th Leg., R.S., ch. 324 § 7.002, Tex. Sess. Law Serv. 841, 848 (Vernon) (to be codified as amendments to Fam. Code § 51.03(b)); Act of May 30, 2017, 85th Leg., R.S., ch. 685 § 21, 2017 Tex. Sess. Law Serv. 3044, 3057 (Vernon) (to be codified as amendments to Fam. Code § 51.03(b)) (defining "conduct indicating a need for supervision"). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after

September 1, 2017.<sup>2</sup> See Act of May 28, 2017, 85th Leg., R.S., ch. 746 § 13, 2017 Tex. Sess. Law Serv. 3176-77. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. See Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find the submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b). However, the requestor may be the legal guardian of the juvenile offender at issue, and therefore, may have access to the information at issue pursuant to section 58.008(d) as the child’s legal guardian. See Act of May 28, 2017, 85th Leg., R.S., ch. 746 § 13, 2017 Tex. Sess. Law Serv. 3177 (to be codified at Fam. Code § 58.008(d)). Therefore, we must rule conditionally. If the requestor is not a legal guardian of the juvenile offender at issue, then the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.<sup>3</sup> If the requestor is a legal guardian of the juvenile offender at issue, then the department may not withhold the information at issue on that ground. See Act of May 28, 2017, 85th Leg., R.S., ch. 746 § 13, 2017 Tex. Sess. Law Serv. 3177 (to be codified at Fam. Code § 58.008(d)). Section 58.008(e)(2) provides that information subject to any other exception to disclosure under the Act or other law must also be redacted. See Act of May 28, 2017, 85th Leg., R.S., ch. 746 § 13, 2017 Tex. Sess. Law Serv. 3177 (to be codified at Fam. Code § 58.008(e)(2)). Thus, we will consider your argument against disclosure of the submitted information under section 552.108.

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 case. Based on your representation, we conclude the release of the submitted information 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). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic

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<sup>2</sup>Although you raise section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, we note the 85th Legislature repealed this provision effective September 1, 2017. Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 21.

<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

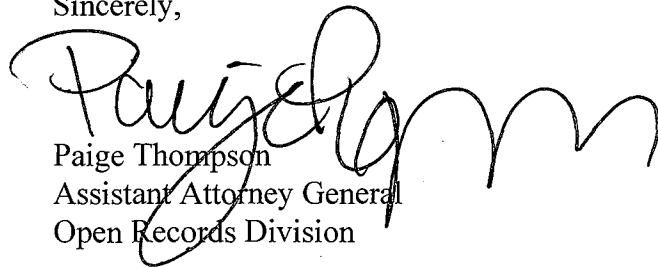
information). Thus, with the exception of the basic information, you may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, if the requestor is not a legal guardian of the juvenile offender at issue, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the requestor is a legal guardian of the juvenile offender at issue, with the exception of the basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>4</sup>

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](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,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/eb

Ref: ID# 687257

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the information being released in this instance includes information that is confidential with respect to the general public. Therefore, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.