



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 1, 2017

Ms. Kristie L. Lewis
Staff Attorney
Houston Police Department
1200 Travis, 21st Floor
Houston, Texas 77002-6000

OR2017-24958

Dear Ms. Lewis:

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# 682758 (ORU No. 17-07670).

The Houston Police Department (the "department") received a request for three specified incident reports. You state the department did not have two of the specified reports.¹ 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. 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:

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

- (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.

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)); *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. *See* May 28, 2017, 85th Leg., R.S., ch. 746 § 22, 2017 Tex. Sess. Law Serv. 3173, 3187. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746 § 13, 2017 Tex. Sess. Law Serv. 3176-77. We note section 58.008(b) applies only to law enforcement records that involve a juvenile as a suspect, offender, or defendant. Section 58.008(b) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party. We understand you to argue the submitted information is subject to section 58.008(b) of the Family Code.² We find the submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply; therefore, 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.³

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.

²Although 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., ch. 746 § 13, 2017 Tex. Sess. Law Serv. 3173, 3176-77.

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

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 "Ramsey A. Abarca", with a long, sweeping horizontal line extending to the right.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/gw

Ref: ID# 682758

Enc. Submitted documents

c: Requestor
(w/o enclosures)