



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 4, 2019

Mr. S. Anthony Safi
Counsel for the El Paso Independent School District
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.
P.O. Box 1977
El Paso, Texas 79999-1977

OR2019-05887

Dear Mr. Safi:

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# 759954 (ORR No. W001698-012819).

The El Paso Independent School District (the "district"), which you represent, received a request for information pertaining to a specified incident. 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, the following:

(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:

(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.

Fam. Code § 58.008(b), (d), (e)(2); *see also id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. 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) (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 is a parent of the juvenile offender at issue and has a right of access to the information at issue pursuant to section 58.008(d). *See id.* § 58.008(d). Therefore, the district may not withhold the submitted information from this requestor under section 552.101 on the basis of section 58.008(b). *See id.* § 58.008(d). Nevertheless, section 58.008(e)(2) provides information

that is subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.008(e)(2). Thus, we will address your remaining arguments against disclosure of the submitted information.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the 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.

Fam. Code § 261.201(a). You state the submitted information was used or developed in an investigation conducted by the district's police department of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Family Code chapter 261); *see also 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 disabilities of minority removed for general purposes). However, we are unable to determine the age of the victim listed in the report at issue. Thus, we must rule conditionally. To the extent the submitted information pertains to an incident involving a victim who was under the age of eighteen at the time of the incident, then the information is subject to section 261.201 of the Family Code, and the district must withhold it in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ If, however, the victim in the information at issue was eighteen years of age or older at the time of the incident, section 261.201 is not applicable to this information, and the district may not withhold the information under section 552.101 of the Government Code on that basis.

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

¹In that event, our ruling is dispositive, and we need not address your remaining argument against disclosure of the submitted information.

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 relates to a pending investigation by the district’s police department, and release of the information would interfere with the investigation and prosecution of the case. Based on this representation and our review, we find 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). 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, if the submitted information pertains to an incident involving a victim who was under the age of eighteen at the time of the incident, then the district must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the submitted information pertains to an incident involving a victim who was eighteen years of age or older at the time of the incident, then, with the exception of basic information, which must be released, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code.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.

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/>

²We note the requestor has a right of access to some of the information being released in this instance pursuant to section 58.008(d) of the Family Code. *See* Fam. Code § 58.008(d). Accordingly, if the district receives another request for this same information from a different requestor, the district must again seek a ruling from this office.

[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 'KH', written over a light blue horizontal line.

Kieran Hillis
Assistant Attorney General
Open Records Division

KH/jxd

Ref: ID# 759954

Enc. Submitted documents

c: Requestor
(w/o enclosures)