



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 27, 2019

Ms. Sabrina E. Fernandez
Public Information Specialist
Katy Independent School District
6301 South Stadium Lane
Katy, Texas 77494

OR2019-08418

Dear Ms. Fernandez:

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# 756649 (PIR# 18575_70).

The Katy Independent School District (the "district") received a request for five specified police reports and the case log of the district's police department for 2018. 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 representative sample of information.¹

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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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.

Fam. Code § 58.008(b); *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. *See* Act of 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* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find case numbers 18-1673, 18-1834, and 18-3001 involve juvenile offenders, 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 district must withhold case numbers 18-1673, 18-1834, and 18-3001 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.²

Moreover, some of the remaining information in the submitted case log involves delinquent conduct or conduct indicating a need for supervision, but we are unable to determine the age of any suspect listed in the information at issue. Accordingly, we must rule conditionally with respect to this information. To the extent an offender in a report of delinquent conduct was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then, as it does not appear any of the exceptions in section 58.008 apply, the district must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, to the extent the case log involves a report of non-delinquent conduct or an offender who was under ten years of age or who was seventeen years of age or older at the time of the conduct, then the information does not involve juvenile conduct for purposes of section 58.008(b) of the Family Code, and no portion of the information at issue may be withheld under section 552.101 of the Government Code on that basis.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

We note some of the remaining information may be confidential under section 552.101 of the Government Code in conjunction with 261.201 of the Family Code. Section 552.101 of the Government Code also encompasses information that is made confidential by statute. Section 261.201(a) of the Family Code provides as follows:

(a) 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.

Id. § 261.201(a). We note the information we have marked may have been used or developed in investigations of alleged or suspected child abuse or neglect. *See 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 the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). However, we are unable to determine the age of the victims in the information at issue. Thus, we must rule conditionally. If the information at issue pertains to incidents involving victims who were under the age of eighteen at the time of the incidents at issue, then the information is subject to section 261.201 of the Family Code. In that case, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³ If, however, the victims in the information at issue were eighteen years of age or older at the time of the incident, section 261.201 is not applicable to this information. In that instance, we conclude the district may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 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

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

to information requested). You state case numbers 18-1792 and 18-1945 pertain to concluded investigations 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 the information at issue.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *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 case numbers 18-1792 and 18-1945 under section 552.108(a)(2) of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov’t Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). Upon review, we find you have not demonstrated how release of any of the remaining information would interfere with law enforcement or crime prevention. Accordingly, the district may not withhold any of the information at issue under section 552.108(b)(1).

In summary, the district must withhold case numbers 18-1673, 18-1834, and 18-3001 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. To the extent an offender in a report of delinquent conduct was ten years of age or

older and under seventeen years of age at the time of the conduct at issue, the district must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. To the extent the information we have marked involves victims who were under the age of eighteen at the time of the incidents at issue, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the district may withhold case numbers 18-1792 and 18-1945 under section 552.108(a)(2) of the Government Code. The district must release the remaining information.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/gw

Ref: ID# 756649

Enc. Submitted documents

c: Requestor
(w/o enclosures)