



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2019

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2019-08742

Dear Ms. Pemberton:

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# 757174 (ORR# W027705).

The Killeen Police Department (the "department") received a request for specified incident reports involving a named individual. You have released some information. 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." 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 (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 a portion of the submitted information involves a juvenile offender so as to fall within the scope of section 58.008(b). However, the requestor is a recruiter for the United States Navy (the "Navy"). Thus, the requestor may be an authorized representative of the named individual and have access to the information at issue pursuant to section 58.008(d). *See id.* § 58.008(d). Accordingly, we must rule conditionally. If the requestor is not an authorized representative of the named individual, then the department must withhold the information we indicated in its entirety under section 552.101

of the Government Code in conjunction with section 58.008(b) of the Family Code. However, if the requestor is an authorized representative of the named individual, then the department may not withhold the information on that ground. *See id.* § 58.008(d). Further, 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 consider whether the information at issue is otherwise excepted from disclosure.

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. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to criminal investigations that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the submitted information pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) 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 “front-page” 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, which must be released, the department may generally withhold the submitted information under section 552.108(a)(2) of the Government Code.

However, the named individual may be a potential enlistee in the Navy. The United States Department of Defense (the “DoD”) is authorized to perform background investigations of persons seeking to enlist to determine the eligibility of applicants for acceptance into the armed services. 5 U.S.C. § 9101(b)(1)(A) (iii); *see also id.* § 9101(a)(6)(A) (DoD is a covered agency for purposes of section 9101). The Navy has a right to the criminal history record information (“CHRI”) of state and local criminal justice agencies when it receives the consent of the individual being investigated for release of such information. *See id.* § 9101(b)(1), (c); *see also* 10 U.S.C. § 111(b)(7) (DoD includes the Department of the Navy). CHRI is defined as “information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision and release” but does not include “identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system” or “records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.” 5 U.S.C. § 9101(a)(2).

Federal law provides the Navy's right of access to CHRI preempts state law. *Id.* § 9101(b)(4) (section 9101 "shall apply notwithstanding any other provision of law . . . of any State"). Therefore, we conclude the Navy's right of access under federal law preempts the confidentiality of section 58.008(b) of the Family Code. *See English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *see also La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). However, federal law also provides the Navy's right of access is contingent on the request being made for eligibility or retention purposes, and on receiving written consent from the individual under investigation for the release of such CHRI. *See* 5 U.S.C. § 9101(b)(1)(A)(iii), (c).

The requestor may have made the request for information for recruiting purposes. However, we are unable to determine whether the individual being investigated has provided the Navy with a signed authorization for the release of the information at issue. Accordingly, we rule conditionally. If the requestor seeks the information at issue for recruiting purposes and provides a signed written consent for release of CHRI from the named individual, then the department must release CHRI pertaining to the named individual. However, if the requestor does not seek the information at issue for recruiting purposes or does not provide a written consent for release of the information, then the department is not required to release CHRI pertaining to the named individual on that ground.

In summary, if the requestor is not an authorized representative of the named individual, then the department (1) must withhold the information we marked in its entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code; and (2) with the exception of basic information, which must be released, may withhold the remaining information under section 552.108(a)(2) of the Government Code. However, if the requestor is an authorized representative of the named individual, then the department must release CHRI pertaining to the named individual if the requestor seeks the information at issue for recruiting purposes and provides a signed written consent for release of CHRI from the named individual; and (2) with the exception of the basic information, which must be released, may withhold the remaining information under section 552.108(a)(2) of the Government Code.

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,

A handwritten signature in black ink, appearing to read "Emily Buchanan". The signature is fluid and cursive, with the first letter of the first name being a large, stylized capital 'E'.

Emily Buchanan
Attorney
Open Records Division

EB/mo

Ref: ID# 757174

Enc. Submitted documents

c: Requestor
(w/o enclosures)