



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 24, 2019

Mr. Buster Nixon
Mason County Sheriff's Office
P.O. Box 391
Mason, Texas 76856

OR2019-17205

Dear Mr. Nixon:

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# 771972.

The Mason County Sheriff's Office (the "sheriff's office") received two requests from different requesters for information related to a specified arrest of a named individual. The second requestor additionally seeks all reports pertaining to another named individual and the second requestor's minor child. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions the sheriff's office claims and reviewed the submitted information.

Initially, we note the submitted information includes a court-filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[,]" unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The sheriff's office seeks to withhold the information at issue under section 552.108 of the Government Code. However, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the sheriff's office may not withhold the court-filed document, which we have marked, under section 552.108. We also note common-law privacy is not applicable

to information contained in public court records. See *Austin Chronicle Corp. v. City of Austin*, No. 03-08-00596-CV, 2009 WL 483232 (Tex. App.—Austin Feb. 24, 2009, no pet.) (mem. op., not designated for publication); see also *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (law cannot recall information once in public domain). Therefore, the sheriff's office may not withhold information contained in the court-filed document under section 552.101 of the Government Code in conjunction with common-law privacy. However, because section 552.101 in conjunction with section 58.008 of the Family Code makes information confidential for purposes of section 552.022, we will address its applicability to the court-filed documents subject to section 552.022(a)(17). Further, we will address the sheriff's office's arguments against disclosure of the remaining 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:

(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) (defining “delinquent conduct” for purposes of title 3 of Family Code).¹ 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 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. The sheriff's office argues the submitted information falls within the scope of section 58.008(b) of the Family Code. Upon review, we find report number 19-593, which is responsive only to the second request, involves a juvenile offender, so as to fall within the scope of section 58.008(b). In this instance, however, the second requestor is a parent or guardian of the juvenile offender. Thus, the second requestor has a right to inspect juvenile law enforcement records concerning this juvenile pursuant to section 58.008(d) of the Family Code. *See id.* § 58.008(d). Accordingly, the sheriff's office may not withhold report number 19-593 from the second requestor under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, 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 id.* § 58.008(e)(2). Thus, we will consider the sheriff's office's argument under section 552.108 of the Government Code against release of the information at issue. Further, the remaining information does not list a juvenile as a suspect, offender, or defendant. Thus, the sheriff's office has not demonstrated the remaining information involves juvenile conduct for purposes of section 58.008(b) of the Family Code. Accordingly, the sheriff's office may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis.

¹Although the sheriff's office argues the information at issue is made confidential by 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, § 21, 2017 Tex. Sess. Law Serv. 3173, 3187.

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). The sheriff’s office states the submitted information relates to active investigations or prosecutions. Based on this representation, we conclude the 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 remaining information.

However, we note 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 information). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code or dates of birth. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, the sheriff’s office may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the sheriff’s office must release the marked court-filed document pursuant to section 552.022(a)(17) of the Government Code. With the exception of the basic information, which must be released, the sheriff’s office may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

We note the first requestor is an employee of the Fredericksburg Police Department. This office has concluded information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. Thus, pursuant to the intergovernmental transfer doctrine, the sheriff’s office has the discretion to release to the first requestor the submitted information responsive to the first request that is

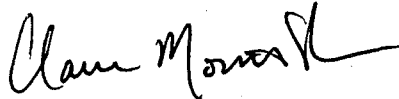
²We note the second requestor has a right of access to some of the information at issue pursuant to section 58.008(d) of the Family Code. *See* Fam. Code § 58.008(d). If the sheriff’s office receives another request for this information from a different requestor, the sheriff’s office must again seek a ruling from this office. *See* Gov’t Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

subject to section 552.108. We note release of information pursuant to an intergovernmental transfer does not constitute a release of information to the public for purposes of section 552.007 of the Act. *See, e.g.*, Attorney General Opinion Nos. H-917 at 1 (1976), H-242 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the sheriff's office does not waive its interest in withholding this information by exercising its discretion under the interagency transfer doctrine.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/be

Ref: ID# 771972

Enc. Submitted documents

c: 2 Requesters
(w/o enclosures)