



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 28, 2019

Mr. S. Anthony Safi
Counsel for the El Paso Independent School District
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P.O. Box 1977
El Paso, Texas 79999-1977

OR2019-23987

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# 783103 (ORR# W001971-053119).

The El Paso Independent School District (the "district"), which you represent, received a request for a specified incident report. The district claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception 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."¹ Gov't Code § 552.101. Section 552.101 encompasses section 58.008(b) of the Family Code, which provides as follows:

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;

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

(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 ten years old and less than seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). The submitted information may involve delinquent conduct or conduct indicating a need for supervision, but we are unable to determine the age of the offender at issue. Accordingly, we must rule conditionally. If the offender at issue was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the offender was not ten years of age or older and under seventeen years of age at the time of the conduct, then the district may not withhold the information at issue under section 552.101 on that basis. In that situation, we must determine whether the submitted information is otherwise excepted from release under the Act.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The district states the submitted information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the 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 the types of information considered to be basic information). The district asserts it need not release basic information in this instance on the basis of the decision in *City of Carrollton v. Paxton*, 490 S.W.3d 187 (Tex. App.—Austin 2016, pet. denied). However, the court in the *Carrollton* case stated “there can be no ‘basic information’ subject to disclosure under [section 552.108(c)] unless there has been ‘an arrest’ or ‘a crime[,]’ [which] would require, in the very least, some sort of determination by law enforcement that a crime has actually occurred, if not also an arrest made, similar to the circumstances addressed in *Houston Chronicle*.” *Id.* at 200. Upon review, we find the district has failed

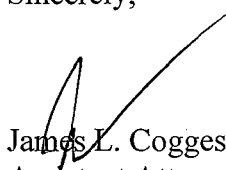
to demonstrate the court's decision in *Carrollton* is applicable in this instance. Accordingly, to the extent the submitted information is not confidential under section 58.008(b) of the Family Code, the district must release basic information, but may withhold the remaining information under section 552.108(a)(2) of the Government Code.

In summary, if the offender at issue was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the offender was not ten years of age or older and under seventeen years of age at the time of the conduct, then the district must release basic information, but 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/be

Ref: ID# 783103

Enc. Submitted documents

c: Requestor
(w/o enclosures)