



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 4, 2019

Mr. Joe R. Zapata  
Administrative Supervisor  
Houston Police Department  
1200 Travis, 10<sup>TH</sup> Floor  
Houston, Texas 77002-6000

OR2019-24622

Dear Mr. Zapata:

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# 785223 (ORR# 19-07313).

The Houston Emergency Center (the "HEC") received a request for all calls for service to a specified address during a specified time period. The HEC claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the HEC claims 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:

(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.

Fam. Code § 58.008(b); *see also id.* § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code).<sup>1</sup> 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). The information submitted as Exhibit 3 and the portion of Exhibit 2 that relates to Exhibit 3 involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear any of the exceptions in section 58.008 apply. Accordingly, the HEC must withhold Exhibit 3 and the portion of Exhibit 2 that relates to Exhibit 3 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

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). 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 to information requested). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to a case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the case and a representation from the law enforcement agency that it wishes to have the information withheld.

The HEC states the information submitted as Exhibit 4 and the information in Exhibit 2 that relates to Exhibit 4 pertains to an active criminal investigation or prosecution by the

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<sup>1</sup>Although the HEC 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.

Houston Police Department (the “department”), which objects to release of the information because such release would interfere with law enforcement. 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, the HEC may withhold Exhibit 4 and the portion of Exhibit 2 that relates to Exhibit 4 under section 552.108(a)(1) of the Government Code on behalf of the department.

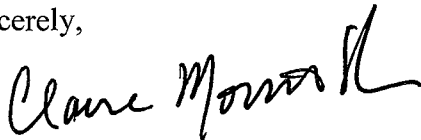
The HEC states the information submitted as Exhibit 5 and the portion of Exhibit 2 that relates to Exhibit 5 pertains to a closed investigation by the department that did not result in conviction or deferred adjudication, and the department objects to release of the information. Based on this representation, we agree the HEC may withhold Exhibit 5 and the portion of Exhibit 2 that relates to Exhibit 5 under section 552.108(a)(2) of the Government Code on behalf of the department.

In summary, the HEC must withhold the submitted as Exhibit 3 and the portion of Exhibit 2 that relates to Exhibit 3 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The HEC may withhold Exhibit 4 and the portion of Exhibit 2 that relates to Exhibit 4 under section 552.108(a)(1) of the Government Code and may withhold Exhibit 5 and the portion of Exhibit 2 that relates to Exhibit 5 under section 552.108(a)(2) of the Government Code on behalf of the department.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/be

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)