



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 4, 2019

Mr. John Saenz
Crime Records Office
McAllen Police Department
P.O. Box 220
McAllen, Texas 78505-0220

OR2019-27862

Dear Mr. Saenz:

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# 789417 (PIR No. 52754).

The McAllen Police Department (the "department") received a request for all records pertaining to the requestor's client. 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 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. This section encompasses information made confidential by other statutes, such as 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 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:

- (1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and
- (2) any information that is excepted from required disclosure under [the Act] or any other law.

Act of May 14, 2019, 86th Leg., R.S., H.B. 1760, § 4 (to be codified at Fam. Code § 58.008(b)); Act of May 21, 2019, 86th Leg., R.S., S.B. 2135, § 3 (to be codified at Fam. Code § 58.008(d)-(d-1)); Fam. Code § 261.201(e); *see also* Fam. Code § 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. 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). Upon review, we find portions of the submitted information involve juvenile offenders, so as to fall within the scope of section 58.008(b). However, we note the requestor's client, who is now an adult, is one of the juvenile offenders in the information at issue. As such, the requestor has a right to inspect juvenile law enforcement records concerning her client pursuant to section 58.008(d) of the Family Code. *See id.* § 58.008(d). Nevertheless, section 58.008(e)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor's client must be redacted. *See id.* § 58.008(e)(1). However, upon review, we find you have failed to demonstrate the

applicability of section 58.008 of the Family Code to any of the remaining information at issue, and the department may not withhold it under section 552.101 on that basis. We note, 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 your argument under section 552.108 of the Government Code with respect to the information at issue.

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 a criminal investigation 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 concluded criminal investigations that did not result in convictions or deferred adjudications. Based on this 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.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist] 1975). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, a detailed description of the offense, as well as the names and addresses of arrestees. *See* ORD 127 at 3-4. Accordingly, with the exception of the basic information, which generally must be released to this requestor, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. In releasing basic information, the department must withhold the personally identifiable information concerning the other juvenile offenders, which we marked, under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code.¹

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

¹ As noted above, the requestor has a special right of access to some of the information being released in this instance. *See* Fam. Code § 58.008(d); *see also* Gov't Code § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jxd

Ref: ID# 789417

Enc. Submitted documents

c: Requestor
(w/o enclosures)