



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 20, 2019

Ms. Karol Davidson
Staff Attorney
Texas Juvenile Justice Department
P.O. Box 12757
Austin, Texas 78711

OR2019-36183

Dear Ms. Davidson:

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# 801500 (Ref. No. 34357).

The Texas Juvenile Justice Department (the "department") received a request for certain information pertaining to specified investigations involving a named individual, the complete personnel file for the named individual, and specified department policies.¹ You state the department does not have any information responsive to portions of the request.² You state the department has released some information to the requestor and will provide access to some additional information. 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.

¹ You state, and provide documentation demonstrating, the department sought and received clarification of the information requested. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

² The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 information at issue 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 represent the information you indicated pertains to a concluded criminal investigation conducted by the department's Office of the Inspector General that did not result in conviction or deferred adjudication. Based on your representations 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 a detailed description of the offense and the identities of complainants and arrestees, but does not include the identities of any witnesses who are not complainants or dates of birth. *See id.* at 3-4. Accordingly, with the exception of the basic information, the department may withhold the information you indicated under section 552.108(a)(2) of the Government Code.³

Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1). This section is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). Rather than merely making a conclusory assertion that releasing the information would interfere with law enforcement, the governmental body claiming section 552.108(b)(1) must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Record Decision No. 531 at 3-4 (1989) (detailed guidelines regarding police department's use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 252 (1980) (section 552.108 designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment).

³ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

However, section 552.108(b)(1) is not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You assert the video recordings you indicated are excepted from disclosure under section 552.108(b)(1) of the Government Code. You state the information at issue includes “surveillance video recordings of the interior of a [department] [c]orrectional facility.” Further, you state the video recordings at issue reveal detailed information regarding the layout of the facility and the location of the facility’s video surveillance system, as well as the techniques and procedures utilized by department staff. You assert release of this information “would undermine the security of [the department’s] secure facilities and put [department] staff, the youth in [department] custody, and the community at risk.” Based on your representations and our review, we find the release of the information at issue would interfere with law enforcement. Accordingly, the department may withhold the video recordings you indicated under section 552.108(b)(1) of the Government Code.⁴

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 244.003 of the Human Resources Code, which provides:

(a) The department shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control.

(b) Except as provided by Section 243.051(c), these records and all other information concerning a child, including personally identifiable information, are not public and are available only according to the provisions of Section 58.005, Family Code, Section 244.051, and Chapter 67, Code of Criminal Procedure.

Hum. Res. Code § 244.003. You state the remaining information contains personally identifiable information relating to youth in the custody of the department and, thus, is within the scope of section 244.003. We have no indication the requestor has a right of access to the information at issue under section 58.005 of the Family Code, section 243.051(c) of the Human Resources Code, section 244.051 of the Human Resources Code, or chapter 67 of the Code of Criminal Procedure. Based on your representations and our review, we conclude section 244.003 is applicable to some of the information at issue. Accordingly, the department must withhold all identifying information of minors in custody within the basic information under section 552.101 of the Government Code in conjunction

⁴ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.


with section 244.003 of the Human Resources Code. However, upon review, we find the department may not withhold any portion of the remainder of the basic information under section 552.101 of the Government Code on the basis of section 244.003 of the Human Resources Code.

In summary, with the exception of the basic information, which must generally be released, the department may withhold the information you indicated under section 552.108(a)(2) of the Government Code. The department may withhold the video recordings you indicated under section 552.108(b)(1) of the Government Code. In releasing the basic information, the department must withhold all identifying information of minors in custody under section 552.101 of the Government Code in conjunction with section 244.003 of the Human Resources 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,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/mo

Ref: ID# 801500

Enc. Submitted documents

c: Requestor
(w/o enclosures)