



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 20, 2019

Mr. Joe R. Zapata  
Administrative Supervisor  
Houston Police Department  
1200 Travis Street, 21st Floor  
Houston, Texas 77002-6000

OR2019-36300

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# 803005 (ORU No. 19-11212).

The Houston Emergency Center (the "center") received a request for information pertaining to 911 calls originating from six specified addresses during a stated period of time. You indicate the center does not have information responsive to four of the addresses specified in the request.<sup>1</sup> 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 representative sample of information.<sup>2</sup>

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 section 58.008(b) of the Family Code, which provides:

Except as provided by Subsection (c), 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:

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<sup>1</sup> 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).

<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

- (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), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) applies to records of juvenile conduct that occurred before, on, or after September 1, 2017.<sup>3</sup> The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 1.02(2) (defining “child” for purposes of title 3 of Family Code). You assert the information submitted as Exhibit 2 is subject to section 58.008(b) of the Family Code. Upon review, we find the information at issue involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply. Accordingly, the center must withhold Exhibit 2 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). Generally, 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. 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); Open Records Decision No. 434 (1986). 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

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<sup>3</sup> Although you raise section 552.101 of the Government Code in conjunction with 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. Thus, we understand you to raise section 58.008(b) of the Family Code.

representation from the law enforcement agency that it wishes to have the information withheld.

You state the information submitted as Exhibit 3 pertains to inactive criminal investigations conducted by the Houston Police Department (the “department”) in which we understand the statutes of limitations have not run. Further, you state the department objects to release of the information at issue because its release would interfere with the criminal investigations. Based on your representations and our review, 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). Accordingly, the center may withhold Exhibit 3 under section 552.108(a)(1) of the Government Code on behalf of the department.

You state the information submitted as Exhibit 4 pertains to concluded criminal investigations by the department that did not result in conviction or deferred adjudication, and the department objects to release of the information. Based on these representations and our review, we agree the center may withhold Exhibit 4 under section 552.108(a)(2) of the Government Code on behalf of the department.

In summary, the center must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The center may withhold Exhibit 3 under section 552.108(a)(1) of the Government Code and Exhibit 4 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,



Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/eb

Mr. Joe R. Zapata - Page 4

Ref: ID# 803005

Enc. Submitted documents

c: Requestor  
(w/o enclosures)