



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 11, 2020

Ms. Bhavani Madiseti-Vemireddy
Assistant County Attorney
Williamson County Attorney's Office
405 Martin Luther King Jr. Street, Box 7
Georgetown, Texas 78626

OR2020-04090

Dear Ms. Madiseti-Vemireddy:

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# 811636 (WCAO Ref. No. 2019-647-PIA).

The Williamson County Attorney's Office (the "county attorney's office") received a request for a named individual's phone ping requests, location requests, subscriber information, and specified warrants for phone pings during a specified time period.¹ The county attorney's office 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 county attorney's office 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 (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:

¹ The county attorney's office states, and provides documentation showing, it sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(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) 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. 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). We understand the county attorney’s office to assert event ID number 2019-095872 is subject to section 58.008(b).² We find this information 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; therefore, the county attorney’s office must withhold event ID number 2019-095872 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.³

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). The county attorney’s office states event ID numbers 2019-031868 and 2019-256773 pertain to active criminal investigations. Based on the county attorney’s office’s representation 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). Thus, section 552.108(a)(1) is applicable to event ID numbers 2019-031868 and 2019-256773.

² Although the county attorney’s office raises 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.

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

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). The county attorney's office states event ID numbers 2017-062018, 2019-197130, and 2019-015613 pertain to closed cases that did not result in convictions or deferred adjudications. Based on the county attorney's office's representation and our review, we agree section 552.108(a)(2) is applicable to event ID numbers 2017-062018, 2019-197130, and 2019-015613.

However, we note 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the county attorney's office may withhold event ID numbers 2019-031868 and 2019-256773 under section 552.108(a)(1) of the Government Code and may withhold event ID numbers 2017-062018, 2019-197130, and 2019-015613 under section 552.108(a)(2) of the Government Code.

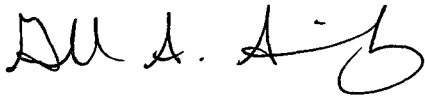
Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find portions of the basic information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the county attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the county attorney's office must withhold event ID number 2019-095872 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. With the exception of the basic information, the county attorney's office may withhold event ID numbers 2019-031868 and 2019-256773 under section 552.108(a)(1) of the Government Code and may withhold event ID numbers 2017-062018, 2019-197130, and 2019-015613 under section 552.108(a)(2) of the Government Code. In releasing the basic information, the county attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/rm

Ref: ID# 811636

Enc. Submitted documents

c: Requestor
(w/o enclosures)