



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 1, 2020

Mr. Jeffrey C. Monk
Administration Manager
Houston Police Department
1200 Travis, 10th Floor
Houston, Texas 77002-6000

OR2020-24742

Dear Mr. Monk:

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# 846890 (HPD OR# 20-07226).

The Houston Police Department (the "department") received a request for information pertaining to two specified incident reports. The department 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 department claims and reviewed the submitted representative sample of information.¹

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 from which a record could be generated may not be disclosed to the public and shall be:

¹ We assume that 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 that 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.

...

(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.

Fam. Code § 58.008(b), (d), (e); *see id.* § 51.03(a) (defining "delinquent conduct" 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 department to assert the information at issue is subject to section 58.008(b).² We find Exhibits 2, 3, 5, and 7 involve juvenile offenders, so as to fall within the scope of section 58.008(b). In this instance, however, the requestor is the parent of one of the juvenile offenders. As such, the

² Although the department 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.

requestor has a right to inspect juvenile law enforcement records concerning this juvenile pursuant to section 58.008(d) of the Family Code. *See id.* § 58.008(d). Nevertheless, we note section 58.008(e)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor's child must be redacted. *See id.* § 58.008(e)(1). Further, 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 the department's 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. *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 department states, and provides documentation showing, the submitted information pertains to closed cases 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 submitted information.

However, we note 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). 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). We note basic information includes, among other items, the identity of an arrestee and the identities of the complainants, but does not include the identities of any suspects who are not arrested, dates of birth, social security numbers of individuals other than an arrestee, or telephone numbers. *See* ORD 127 at 3-4. With the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.³ However, as noted above, section 58.008(e)(1) states any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor's child shall be withheld from disclosure. *Fam. Code* § 58.008(e)(1). Accordingly, in releasing the basic information, the department must withhold the identities of the other juvenile arrestees under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code.⁴

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.

³ As we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* *Occ. Code* § 1701.661(a), (e).

⁴ As noted above, the requestor has a right of access to the information being released in this instance. *See* *Fam. Code* § 58.008(d). If the department receives another request for this information from a different requestor, the department must again seek a ruling from this office. *See* *Gov't Code* §§ 552.301, .302; Open Records Decision No. 673 (2001).

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 A. Arismendez
Assistant Attorney General
Open Records Division

GAA/mo

Ref: ID# 846890

Enc. Submitted documents

c: Requestor
(w/o enclosures)