



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 14, 2022

Mr. Matthew Entsminger
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2022-01299

Dear Ms. Entsminger:

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# 926213 (ORR# 988785-1).

The Travis County District Attorney's Office (the "district attorney's office") received a request for all offenses of a specified type during a specified time period in a specified location. The district attorney's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the district attorney's office claims and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the requestor contends the district attorney's office failed to comply with section 552.301(b) of the Government Code in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The district attorney's office informs us it received the request for information on September 13, 2021. The district attorney's office states it sought

¹ 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.

clarification of the information requested, and received clarification of the information requested on September 28, 2021, and on October 5, 2021. *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). The district attorney's office states in response to the requestor's clarification, the district attorney's office provided a statement to the requestor on October 14, 2021, including a required itemized estimate of charges. *See* Gov't Code §§ 552.231(a) (written statement described by Gov't Code § 552.231(b) shall be provided to requestor if governmental body determines (1) that responding to request for information will require programming or manipulation of data and (2) that compliance with request is not feasible or will result in substantial interference with ongoing operations or the information could be made available in requested form only at costs that cover programming and manipulation), .2615. The district attorney's office states its cost estimate also required the requestor to pay a deposit. *See id.* § 552.263. The district attorney's office informs us it received payment of the deposit on October 21, 2021. Accordingly, the district attorney's office is considered to have received the request on October 21, 2021. *See id.* § 552.263(e). The district attorney's office does not inform us it was closed for any business days between October 21, 2021, and November 4, 2021. Accordingly, the district attorney's office was required to provide the information required by section 552.301(b) by November 4, 2021. The envelope in which the district attorney's office provided the information required by section 552.301(b) was postmarked November 3, 2021. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the district attorney's office complied with the procedural requirements mandated by section 552.301 of the Government Code. Therefore, we will consider the district attorney's office's claimed exception to disclosure of the submitted information.

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."² Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The submitted information relates to reports of alleged abuse or neglect. However, we are unable to determine the age of the victims involved in the information at issue. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we must rule in the alternative. To the extent any portion of the submitted information, including the information we marked, relates to an incident involving a victim who was a child at the time of the incident at issue, the information is subject to chapter 261 of the Family Code. In that instance, as the district attorney’s office does not indicate it has adopted a rule that governs the release of this type of information, the district attorney’s office must withhold the information at issue, including the information we marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³ *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* However, to the extent the information at issue does not involve a victim of alleged abuse or neglect who was a child at the time of the incident at issue, the information is not subject to chapter 261 of the Family Code and the district attorney’s office may not withhold the information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In that instance, we will consider the applicability of other exceptions to disclosure of the information at issue.

Section 552.101 of the Government Code also 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) 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.

³ As our ruling is dispositive for this information, we need not address the district attorney’s office’s argument against its disclosure.

Fam. Code § 58.008(b); *see also id.* § 51.03 (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 note section 58.008(b) does not apply to law enforcement records that relate to a juvenile involved only as a complainant, victim, witness, or other involved party; rather, the juvenile must be involved as a suspect, offender, or defendant. Upon review, we find the remaining information at issue involves delinquent conduct or conduct indicating a need for supervision. However, we are unable to determine the ages of the suspects involved in the remaining information at issue. Accordingly, we must rule in the alternative. To the extent the suspect involved in any portion of the remaining information at issue was ten years of age or older and under seventeen years of age at the time of the conduct at issue, as it does not appear any of the exceptions in section 58.008 apply, the district attorney’s office must withhold such information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, to the extent the suspect was under ten years of age or was seventeen years of age or older at the time of the conduct, the information does not involve juvenile conduct for purposes of section 58.008(b) of the Family Code, and the district attorney’s office may not withhold any portion of the remaining information at issue under section 552.101 of the Government Code on that basis. Therefore, in that instance, we will consider the district attorney’s office’s arguments against disclosure of the information.

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 district attorney’s office states some of the remaining information, which it marked, pertains to active criminal prosecutions. Based on this representation, 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 the remaining information the district attorney’s office marked.

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 district attorney’s office states some of the remaining

information at issue, which the district attorney's office marked, pertains to closed criminal prosecutions that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the remaining information the district attorney's office marked.

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 district attorney's office may withhold the information it marked under section 552.108(a)(1) of the Government Code and may withhold the remaining information it marked under section 552.108(a)(2) of the Government Code.

In summary, to the extent any portion of the submitted information, including the information we marked, relates to an incident involving a victim who was a child at the time of the incident at issue, the district attorney's office must withhold that information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent the suspect involved in any portion of the remaining information was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the district attorney's office must withhold such information 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 district attorney's office may withhold the remaining information it marked under section 552.108(a)(1) of the Government Code and may withhold the information it marked under section 552.108(a)(2) of the Government Code. The district attorney's office must release the remaining information.

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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/be

Ref: ID# 926213

Enc. Submitted documents

c: Requestor
(w/o enclosures)