



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 8, 2022

Mr. Scott K. Stevens
First Assistant District Attorney
Coryell County District Attorney's Office
P.O. Box 919
Gatesville, Texas 76528-0919

OR2022-03346

Dear Mr. Stevens:

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# 928865.

The Coryell County District Attorney's Office (the "district attorney's office") received a request for certain information pertaining to the murder of a named individual, including three specified case numbers involving three named individuals.¹ You state the district attorney's office does not have some of the requested information.² You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.137, and 552.147 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information, a portion of which consists of

¹ You state, and provide documentation demonstrating, the district attorney's office sought and received clarifications of the information requested. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

² The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

a representative sample.³ We have also received and considered comments submitted on behalf of the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note the requestor asks the district attorney's office to answer a question. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* ORDs 563 at 8, 555 at 1-2. However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. *See* Open Records Decision Nos. 561 at 8-9 (1990), 555 at 1-2. We assume the district attorney's office has made a good faith effort to do so.

Next, you inform us the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-05779 (2019). In that ruling, we determined the district attorney's office must withhold the information at issue pursuant to section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the district attorney's office must rely on Open Records Letter No. 2019-05779 as a previous determination and withhold the identical information in accordance with that ruling.⁴ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, to the extent the information in the instant request is not identical to the information previously requested and ruled upon in Open Records Letter No. 2019-05779, we will address your arguments against its disclosure.

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. Section 552.101 encompasses section 58.008 of the Family Code, which provides, in part, the following:

(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 from which a record could be generated may

³ 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 that those records contain substantially different types of information than that submitted to this office.

⁴ As we are able to make this determination, we need not address the arguments against disclosure of this information.

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.

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). Upon review, we find the submitted 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. Accordingly, the district attorney’s office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.⁵

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the district attorney’s office must rely on Open Records Letter No. 2019-05779 as a previous determination and withhold the identical information in accordance with that ruling. The district attorney’s office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family 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

⁵ As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 928865

c: Requestor