



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2022

Ms. Sally Ortiz
Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2022-20484

Dear Ms. Ortiz:

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# 959218 (ORR# P021615).

The Plano Police Department (the "department") received a request for all reports involving four named individuals at a specified address. The department states it is releasing some of the requested information. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the department claims and reviewed the submitted representative sample of information.¹

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 the submitted information relates to a closed criminal investigation that did not result in conviction or deferred adjudication.

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.

Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

However, 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may generally withhold the submitted information under section 552.108(a)(2) of the Government Code.

In this instance, the requestor is a court-appointed child custody evaluator. Section 107.1111 constitutes “applicable state law” in this instance. Section 107.1111(a) of the Family Code reads as follows:

(a) Notwithstanding any other state law regarding confidentiality, a child custody evaluator appointed by a court is entitled to obtain records that relate to any person residing in a residence subject to a child custody evaluation from:

- (1) a local law enforcement authority;
- (2) a criminal justice agency;
- (3) a juvenile justice agency;
- (4) a community supervision and corrections department created under Chapter 76, Government Code; or
- (5) any other governmental entity.

Fam. Code § 107.1111(a). A “child custody evaluator” means “an individual who conducts a child custody evaluation under [subchapter D of chapter 107 of the Family Code]” and “includes a private child custody evaluator.” *Id.* § 107.101(2) (defining “child custody evaluator”). The requestor states she is a child custody evaluator and was appointed by a court to complete an evaluation regarding the family of the named individuals. The requestor seeks information related to the named individuals. Accordingly, if the submitted information relates to a person residing in a residence subject to the child custody evaluation, then the requestor has a right of access to the information in its entirety under section 107.1111 of the Family Code. Although the department seeks to withhold the information under section 552.108 of the Government Code, we note a specific statutory right of access prevails over as the general exceptions under the Act. *See*; Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Accordingly, if the submitted information relates to a person residing in a residence subject to the child custody evaluation, then the department must release the submitted information in its entirety to this requestor pursuant to section 107.1111 of the Family Code. However, if the submitted information does not

relate to a person residing in a residence subject to a child custody evaluation, then with the exception of the basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(2) of the Government 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 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/jm

Ref: ID# 959218

Enc. Submitted documents

c: Requestor
(w/o enclosures)