



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2022

Mr. Nicholas Toulet
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2022-29898

Dear Mr. Toulet:

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# 974635 (ORR# M037910-071422).

The Midland Police Department (the "department") received a request for nine categories of information related to a specified incident. You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You further claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note some of the submitted information was the subject of previous requests for information, including a request from the current requestor, as a result of which this office issued Open Records Letter No. 2022-18434 (2022). In that ruling, we determined: (1) as the requestor at issue did not properly requested the submitted body worn camera recordings pursuant to chapter 1701 of the Occupations Code, our ruling did not reach this information and it need not be released; (2) with the exception of basic information, which must be released to the requestor at issue, the City of Midland (the "city") may withhold the remaining information under section 552.108(a)(1) of the Government Code; (3) in releasing the basic information at issue, the city must withhold certain information under

section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code and may withhold certain information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. We note you no longer assert section 552.108(a)(1) of the Government Code for some of the information we previously ruled may be withheld under section 552.108(a)(1), which you have submitted as Exhibits D and G. Therefore, as to the information in Exhibits D and G, the circumstances on which Open Records Letter No. 2022-18434 was based have changed, and the department may not rely on that ruling as a previous determination for that information. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). As to the remaining information at issue in Open Records Letter No. 2022-18434, there is no indication the law, facts, or circumstances on which the prior ruling was based have changed. With respect to the remaining information, we conclude the department must continue to rely on Open Records Letter No. 2022-18434 as a previous determination and withhold or release the identical information in accordance with that ruling. *See id.* We will consider your arguments for the remaining 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. This section 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.

...

(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;

(4) the child's parent or guardian; or

(5) the chief executive officer or the officer's designee of a primary or secondary school where the child is enrolled only for the purpose of conducting a threat assessment or preparing a safety plan related to the child.

(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 also id.* § 51.03(a) (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). The information at issue involves juvenile offenders, so as to fall within the scope of section 58.008(b). We note although one of the juveniles whose information is at issue is deceased, section 58.008 is not solely intended to protect the privacy interests of juveniles. Thus, a juvenile's death does not remove information relating to the deceased juvenile from the ambit of section 58.008(b). It does not appear any of the exceptions in section 58.008 apply with respect to the information related to incident report number

2022-0106-006. Accordingly, the department must withhold the information related to incident report number 2022-0106-006 in its entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.¹

However, the requestor is an authorized representative of the family of a deceased juvenile offender in the remaining information. Thus, the 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). Accordingly, the department may not withhold any of the remaining information at issue from the requestor under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, section 58.008(e)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness to whom the requestor is not the authorized representative of must be redacted. *See id.* § 58.008(e)(1). Accordingly, the department must withhold all personally identifiable information of the remaining juvenile suspects under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code.² 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 whether the information at issue is otherwise excepted from disclosure from the requestor.

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which 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) 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.

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Id. § 261.201(a). Upon review, we find you have not demonstrated any portion of the information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established the information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Therefore, the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information in Exhibits D and G relates to concluded criminal cases that did not result in convictions or deferred adjudications. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable to the remaining information in Exhibits D and G.

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). We note basic information includes the identity of the arrestee and the identity of the complainant. *See* ORD 127 at 3-4. However, we note basic information does not include the identities of any suspects who were not arrested, the identities of any witnesses or victims who are not complainants, or the address or telephone number of the complainant, unless the address is the location of the crime. *See id.* Thus, with the exception of basic information, the department may withhold the remaining information in Exhibits D and G pursuant to section 552.108(a)(2) of the Government Code.³

Section 552.101 of the Government Code also encompasses the common-law informer’s privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer’s privilege protects from disclosure the identities of persons who report activities over which the governmental body

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

has criminal or quasi-criminal law-enforcement authority. See Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990). We note the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. See ORD 208 at 1-2.

You state portions of the basic information identify complainants who reported possible violations of criminal laws to the department. Based upon your representations and our review, we conclude you have demonstrated the applicability of the common-law informer's privilege to some of the information at issue. Therefore, the department may withhold the names of the reporting parties within the basic information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, none of the remaining information at issue identifies an individual who reported a criminal violation for purposes of the informer's privilege. Accordingly, the department may not withhold any of the remaining information under section 552.101 on that basis.

In summary, except for the information in Exhibits D and G, the department must continue to rely on Open Records Letter No. 2022-18434 as a previous determination and withhold or release the identical information in accordance with that ruling. The department must withhold the information related to incident report number 2022-0106-006 in its entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. With the exception of basic information, which must be released to the requestor, the department may withhold the remaining information in Exhibits D and G pursuant to section 552.108(a)(2) of the Government Code. In releasing basic information to the requestor, the department must withhold the personally identifiable information of the juvenile arrestees not represented by the requestor under section 552.101 of the Government Code in conjunction with section 58.008(e)(1) of the Family Code and may withhold the names of the reporting parties under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.⁴

⁴ We note the second requestor has a right of access to the information being released. See Fam. Code § 58.008(d). Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 974635

Enc. Submitted documents

c: Requestor
(w/o enclosures)