



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 21, 2022

Ms. Debra Anderson  
Public Information Coordinator  
Hays County  
111 East San Antonio Street, Suite 202  
San Marcos, Texas 78666

OR2022-39862

Dear Ms. Anderson:

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# 992112 (Reference# R003433-100522).

The Hay County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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." *Id.* § 552.101. Section 552.101 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.

Fam. Code § 58.008(b); *see also id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.008). 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 some of the remaining information at issue may involve a juvenile offender, so as to fall within the scope of section 58.008(b). However, we are unable to determine the age of the suspect in the information at issue. Accordingly, we must rule conditionally. If the suspect at issue was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then, as it does not appear any of the exceptions in section 58.008 apply, 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. However, if the suspect at issue was under ten years of age or seventeen years of age or older at the time of the conduct, then the information at issue 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 information at issue under section 552.101 of the Government Code on that basis.

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). You state the submitted information pertains to a concluded investigation that did not result in conviction or deferred adjudication. Based on your 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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, *See* 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). Accordingly, with

the exception of basic information, the district attorney's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>1</sup>

In summary, if the suspect at issue was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then, as it does not appear any of the exceptions in section 58.008 apply, 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. If the suspect at issue was under ten years of age or seventeen years of age or older at the time of the conduct, then, with the exception of basic information, the district attorney's office 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,

Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/pt

Ref: ID# 992112

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup> We note the requestor has a special right of access to the information being released. *See* Fam. Code § 261.201(k). Accordingly, if the district attorney's office receives another request for this same information from a different requestor, the district attorney's office must again seek a ruling from this office.