



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 27, 2013

Mr. John R. Batoon  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2013-16838

Dear Mr. Batoon:

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# 504644.

The El Paso Police Department (the "department") received a request for the entire report relating to case number 08-105196. 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." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from 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 Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

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...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file 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 other law.

Fam. Code § 58.007(c), (e), (j). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Upon review, we agree the submitted information is within the scope of section 58.007(c). In this instance, however, the requestor is the juvenile offender listed in the information at issue and is now an adult. Therefore, the requestor has a right to inspect or copy his own law enforcement records, and the department may not withhold the submitted information from this requestor under section 552.101 of the Government Code in conjunction with subsection 58.007(c) of the Family Code. *See id.* § 58.007(e).

However, subsection 58.007(j)(1) provides personally identifiable information concerning any other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). For the purposes of section 58.007(j)(1), a juvenile victim or witness is a

person who is under eighteen years of age. Upon review, we find the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with subsection 58.007(j)(1) of the Family Code. Additionally, subsection 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). Accordingly, we will address your remaining arguments against disclosure.

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 reasonably 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). You state the information at issue is currently pending investigation and/or prosecution with the El Paso County Attorney’s office. However, you have provided a communication from the El Paso County Attorney’s Office stating “the case is no longer pending and did result in the juvenile equivalent to a conviction.” Because you have provided this office with contradictory representations, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to the submitted information. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Therefore, we conclude the department may not withhold the submitted information under section 552.108 of the Government Code.

Finally, we address your argument against disclosure under common-law privacy. Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. In this instance, you argue that the information at issue is subject to common-law privacy because the victim of the alleged crime has a right of privacy that precludes the release of this information. Upon review, we find none of the submitted information is highly intimate or embarrassing information of no legitimate public concern. Therefore, the department may not withhold any of the submitted information under section 552.101 on that ground.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with subsection 58.007(j)(1) of the Family Code. The department must release the remaining information to the requestor.<sup>1</sup>

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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Alia K. Plasencia-Bishop  
Assistant Attorney General  
Open Records Division

AKPB/eb

Ref: ID# 504644

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup> We note this requestor has a right of access to the information being released, which is confidential with respect to the general public. Fam. Code § 58.007(e). Therefore, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.