



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 19, 2015

Mr. Daniel Ortiz
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2015-05273

Dear Mr. 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# 556867 (ORR #15-1026-5022).

The El Paso Police Department (the "department") received a request for a specified police report. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.¹ 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. This exception encompasses information other statutes make confidential, such as section 58.007(c) 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,

¹Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy and constitutional privacy for the submitted information, you provide no arguments explaining how these doctrines are applicable to the information at issue. Therefore, we assume you no longer assert these doctrines. See Gov't Code §§ 552.301, .302.

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.

...

(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 Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c). *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of section 58.007). 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 when the conduct occurred. *See id.* § 51.02(2). Upon review, we find the submitted information involves juvenile delinquent conduct that occurred after September 1, 1997. Therefore, the submitted information is generally confidential under section 58.007(c). We note, however, the requestor is a parent of one of the juvenile offenders listed in the information. Therefore, the requestor has a right

to inspect juvenile law enforcement records concerning her child pursuant to section 58.007(e) of the Family Code. *See id.* § 58.007(e). However, section 58.007(j)(1) states before information is released to a parent under section 58.007(e), a custodian of records must redact any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the parent's child. *See id.* § 58.007(j)(1). Further, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your claim under section 552.108 of the Government Code.

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 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 submitted information pertains to ongoing prosecutions. Based on your representation and our review, we conclude the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, we note, and you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). We note basic information includes the identity of an arrestee. *See id.* Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

In this instance, we note the basic information contains the identifying information of a juvenile offender who is not the requestor’s child. As noted above, section 58.007(j)(1) of the Family Code states before information is released to a parent under section 58.007(e), a custodian of records must redact any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the parent’s child. *See Fam. Code* § 58.007(j)(1). Thus, in releasing basic information, the department must withhold the

²As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information, except to note basic information is generally not excepted from public disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991).

identifying information of the juvenile offender who is not the requestor's child under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.

In summary, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. When releasing basic information, the department must withhold the identifying information of the juvenile offender who is not the requestor's child under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) 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 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,



Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 556867

Enc. Submitted documents

c: Requestor
(w/o enclosures)