



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 8, 2015

Mr. James A. McKechnie
Assistant City Attorney
Office of the City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2015-06737

Dear Mr. McKechnie:

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# 559156 (City ID# 43).

The City of Wichita Falls (the "city") received a request for criminal records pertaining to the requestor. 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.

Initially, you state some of the requested information is subject to a court order of restricted access. We understand the order was entered in accordance with section 58.203 of the Family Code, which states the Texas Department of Public Safety ("DPS") shall certify that juvenile law enforcement records are subject to automatic restriction of access under certain circumstances. Fam. Code § 58.203. Section 58.204(b) of the Family Code provides:

(b) On certification of records in a case under Section 58.203, the [DPS] may permit access to the information in the juvenile justice information system relating to the case of an individual only:

- (1) by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code;
- (2) for research purposes, by the Texas Juvenile Justice Department;
- (3) with the written permission of the individual, by military personnel, including a recruiter, of this state or the United States if the individual is an applicant for enlistment in the armed forces[;]
- (3) by the person who is the subject of the records on an order from the juvenile court granting the petition filed by or on behalf of the person who is the subject of the records;
- (4) with the permission of the juvenile court at the request of the person who is the subject of the records; or
- (5) with the permission of the juvenile court, by a party to a civil suit if the person who is the subject of the records has put facts relating to the person's records at issue in the suit.

Id. § 58.204(b) (The Eighty-third Legislature passed two different bills, House Bills 694 and 2862, adding subsection (b)(3)). Moreover, section 58.207 of the Family Code provides, in part:

(a) On certification of records in a case under Section 58.203, the juvenile court shall order:

(1) that the following records relating to the case may be accessed only as provided by Section 58.204(b):

...

(E) records maintained by a law enforcement agency[.]

(b) [O]n receipt of an order under Subsection (a)(1), the agency maintaining the records:

(1) may allow access only as provided by Section 58.204(b); and

(2) shall respond to a request for information about the records by stating that the records do not exist.

Id. § 58.207(a)(1)(E), (b). In this instance, the requestor is not one of the entities listed in section 58.204(b) to which access is allowed. Therefore, pursuant to the order of restricted access and section 58.207(b) of the Family Code, the city must respond to this request for information by stating a portion of the requested information does not exist.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides, in relevant 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.

...

(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 when the conduct occurred. *See id.* § 51.02(2). You assert portions of the submitted information are confidential under section 58.007(c). We note that section 58.007 does not make information relating to traffic offenses confidential. *See id.* §§ 51.02(16) (defining traffic offense), .03(a) (delinquent conduct does not include traffic offense), .03(b) (conduct indicating need for supervision does not include traffic offense). Upon review, we find some of the submitted information involves juvenile delinquent conduct or conduct indicating a need for supervision occurring after September 1, 1997. As such, this information is subject to section 58.007(c). With respect to report numbers 03-040185, 05-020530, and 05-020531, it does not appear that any of the exceptions to confidentiality under section 58.007 apply. Accordingly, the city must withhold report numbers 03-040185, 05-020530, and 05-020531 in their entireties under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.¹ However, the requestor is one of the juvenile offenders in report numbers 02-070871, 02-071051, and 02-111982. Accordingly, in accordance with section 58.007(e), the city may not use section 58.007(c) to withhold this information from the requestor. *See id.* § 58.007(e). However, section 58.007(j)(1) states that, before information is released 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). We note report numbers 02-070871, 02-071051, and 02-111982 contain the identifying information of other juvenile suspects, offenders, victims, or witnesses. Thus, we conclude the city must withhold the identifying information concerning any other juvenile suspects, offenders, victims, or witnesses in this information under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. However, 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 remaining argument against disclosure of the remaining information.

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

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

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 remaining information pertains to concluded investigations that did not result in convictions or deferred adjudications. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the remaining 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*, 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 city may withhold the remaining information under section 552.108(a)(2) of the Government Code. In releasing the basic information, the city must redact personally identifiable information concerning any other juvenile suspect, offender, victim, or witness pursuant to section 58.007(j)(1) of the Family Code. *See* Fam. Code § 58.007(j)(1) (before information is released under section 58.007(e), custodian of records must redact personally identifiable information about juvenile suspect, offender, victim, or witness who is not requesting child).

In summary, in accordance with the order of restricted access and section 58.207(b) of the Family Code, the city must respond to the request by stating a portion of the requested information does not exist. The city must withhold report numbers 03-040185, 05-020530, and 05-020531 in their entireties under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of basic information, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code. In releasing the basic information, the city must withhold personally identifiable information concerning any other juvenile suspects, offenders, victims, or witnesses under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.²

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.

²We note the requestor has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, then the city should again seek a ruling from this office.

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,

A handwritten signature in blue ink, appearing to read 'Kenny Moreland', is positioned above the typed name.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 559156

Enc. Submitted documents

c: Requestor
(w/o enclosures)