



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 4, 2016

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2016-10088

Dear Ms. Pemberton:

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# 608559 (City ID# W018469).

The City of Killeen (the "city") received a request for all records involving the requestor's daughter. You state the city has released some information 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, we note some of the submitted information was the subject of a previous request for information from the same requestor, as a result of which this office issued Open Records Letter No. 2014-13361 (2014). In that ruling, we determined, in part, the city must withhold report number 14-001555 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, and, with the exception of the basic information, which must be released to the requestor pursuant to section 261.201(k) of the Family Code, the city may withhold report number 14-002883 under section 552.108(a)(1) of the Government Code. We have no indication the law, facts, or circumstances on which the previous ruling was based have changed. Accordingly, we conclude the city must rely on Open Records Letter No. 2014-13361 as a previous determination and withhold or release

the information at issue in accordance with that ruling.¹ *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your arguments against disclosure of the remaining information not subject to Open Records Letter No. 2014-13361.

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. Section 58.007 of the Family Code 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.

¹As our ruling is dispositive for this information, we need not address your arguments against its disclosure. Additionally, because the requestor has a right of access to the basic information being released from report number 14-002883, the city must request another decision from this office if it receives another request for this same information from a different requestor. *See* Gov’t Code §§ 552.301(a), .302; *see also* Fam. Code § 261.201(k).

...

(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:

...

(2) any information that is excepted from required disclosure under [the Act] or other law.

Fam. Code § 58.007(c), (e), (j)(2). 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 at issue. *See id.* § 51.02(2). Upon review, we find report numbers 15-004242 and 15-007217 involve a child engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007). Therefore, this information is generally confidential under section 58.007(c). However, in this instance, the requestor is a parent of the child offender at issue. As a result, this requestor has a right to inspect information concerning her child under section 58.007(e), and it may not be withheld from her under section 552.101 of the Government Code in conjunction with section 58.007(c). *See id.* § 58.007(e). Nonetheless, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or law must be redacted. *Id.* § 58.007(j)(2). Thus, we will consider your remaining argument against disclosure of this 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 demonstrate that the requested information relates to a criminal investigation that 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 report numbers 15-004242 and 15-007217 pertain to criminal investigations that have been closed and ended in results other than conviction or deferred adjudication. Based on your representation and our review, we find you have demonstrated the information at issue relates to criminal investigations that concluded in final results other than convictions or deferred adjudications.

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* Open Records Decision No. 127 (1976) (summarizing the

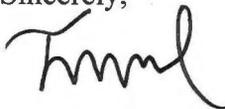
types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the city may withhold report numbers 15-004242 and 15-007217 under section 552.108(a)(2) of the Government Code.

In summary, the city must rely on Open Records Letter No. 2014-13361 as a previous determination and withhold or release the information at issue in accordance with that ruling. With the exception of basic information, which must be released, the city may withhold report numbers 15-004242 and 15-007217 under section 552.108(a)(2) of the Government 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.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bw

Ref: ID# 608559

Enc. Submitted documents

²Because the present requestor has a right of access to the basic information the city would be required to withhold from the general public, the city must request another decision if it receives another request for this same information from a different requestor. *See* Gov't Code §§ 552.301(a), .302; *see also* Fam. Code § 58.007(e).