



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 15, 2016

Mr. M. Matthew Ribitzki  
Deputy City Attorney  
City of Burleson  
141 West Renfro  
Burleson, Texas 76028

OR2016-20924

Dear Mr. Ribitzki:

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# 626701 (ORR No. 967/16-0413).

The Burleson Police Department (the "department") received a request for all reports involving two named individuals. The department states it will withhold some of the information pursuant to Open Records Decision No. 684 (2009) and sections 552.130 and 552.147 of the Government Code.<sup>1</sup> The department states it will redact dates of birth pursuant to the previous determination in Open Records Letter No. 2016-08169 (2016).<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision. Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b).

<sup>2</sup>Open Records Letter No. 2016-08169 is a previous determination issued to the City of Burleson authorizing it to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision.

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 at issue is subject to court orders of restricted access. The orders were 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 in part:

(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). 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) Except as provided by Subsection (c), on 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 to which access is allowed under section 58.204(b). Therefore, in accordance with the submitted orders of restricted access and section 58.207(b) of the Family Code, we find the department must respond to the request by stating a portion of the requested information at issue does not exist.

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 encompasses section 58.007(c) of the Family Code, which makes confidential juvenile records or files relating to conduct that occurred on or after September 1, 1997. Section 58.007 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 Chapter 552, Government Code, 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(c). *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of section 58.007), (b) (defining "conduct indicating a need for supervision" 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 and conduct indicating a need for supervision occurring after September 1, 1997. Therefore, the submitted information is generally confidential under section 58.007(c). With respect to report numbers 2010-027497 and 2014-081785, it does not appear any of the exceptions to disclosure apply. Thus, the department must withhold report numbers 2010-027497 and 2014-081785 in their entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code. However, the requestor is a parent of some of the juvenile offenders listed in portions of the submitted information. Therefore, the requestor has a right to inspect those juvenile law enforcement records depicting her juvenile children as offenders pursuant to section 58.007(e) of the Family Code. *See id.* § 58.007(e). However, before information is released to a parent under section 58.007(e), a custodian of records must redact any personally identifiable information about juvenile suspects, offenders, victims, or witnesses who are not the parent's child. *See id.* § 58.007(j)(1). The department must withhold the personally identifiable information, which we have marked, about juvenile suspects, offenders, victims, or witnesses who are not the parent's children under section 552.101 in conjunction with section 58.007(j)(1). Additionally, 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 arguments and determine whether any of the remaining information is otherwise excepted from the Act.

Section 552.101 also encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

*Id.* § 261.201(a). Upon review, we find some of the remaining information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, and is within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the documents we marked are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold the information pertaining to report number 16-001123, which we have marked, in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Next, we address your arguments for the remaining information under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must 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 remaining information in Exhibit B relates to pending criminal investigations. Based upon this representation, we conclude the release of the remaining information in Exhibit B 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 that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108, however, 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; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). We note basic information includes an arrestee's name, race, sex, age, occupation, address, physical condition, and a detailed description of the offense. *See* ORD 127. Therefore, with the exception of basic information the department may withhold Exhibit B under section 552.108(a)(1). As noted above, section 58.007(j)(1) states that, 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 identifying information of the juvenile arrestees who are not the requestor's children under section 552.101 in conjunction with section 58.007(j)(1) of the Family Code.

Section 552.101 also encompasses section 560.003 of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov't Code § 560.003; *see id.* §§ 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). We have marked fingerprints in Exhibit C. You do not inform us, and the submitted information does not indicate, section 560.002 permits disclosure of the fingerprints we marked. Therefore, the department must withhold the fingerprints we marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

In summary, in accordance with the submitted orders of restricted access and section 58.204 of the Family Code, the department must respond to the request by stating a portion of the requested information at issue does not exist. The department must withhold report numbers 2010-027497 and 2014-081785 in their entireties under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the information pertaining to report number 16-001123, which we have marked, in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Except for basic information, the department may withhold the remaining information in Exhibit B under section 552.108(a)(1) of the

Government Code. However, in releasing the basic information, the department must withhold the identifying information of the juvenile arrestees who are not the requestor's children, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. In releasing Exhibit C, the department must withhold the personally identifiable information, which we have marked, about juvenile suspects, offenders, victims, or witnesses who are not the requestor's children under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The department must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The department must release the remaining information.<sup>3</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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KSM/dls

Ref: ID# 626701

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note that because the requestor has a statutory right of access to certain information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.