



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 20, 2016

Ms. Kristie L. Lewis
Staff Attorney
Houston Police Department
1200 Travis Street
Houston, Texas 77002-6000

OR2016-01363

Dear Ms. Lewis:

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# 594780 (ORU No. 15-7035).

The Houston Police Department (the "department") received a request for specified offense reports involving eight named individuals. The department states it will release some information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have redacted information from the submitted records. You do not assert, nor does our review of our records indicate, you have been granted a previous determination to withhold the redacted information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we are able to discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"); *id.* § 552.302. Thus, in the future, the department should refrain from redacting any information it submits to this office in seeking an open records ruling.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ *Id.* § 552.101. This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which reads as follows:

(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.

Fam. Code § 58.007(c). 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 reported conduct. *See id.* § 51.02(2). Here, Exhibit 3 involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, the department must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.²

Section 552.108(a)(2) of the Government Code exempts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov’t Code* § 552.108(a)(2). Generally, a governmental body claiming section 552.108(a)(2) must 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).

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos.* 481 (1987), 480 (1987), 470 (1987).

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

You state Exhibit 2 relates to a closed case that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to Exhibit 2. You further state Exhibits 4 and 5 pertain to criminal investigations where some of the suspects at issue were charged and convicted, while other suspects were charged, but ultimately the charges were dismissed. You also state the information relating to the suspects who were convicted and the suspects whose charges were dismissed is so intertwined that it cannot be easily separated and that release of the information at issue would reveal information relating to the suspects whose charges did not result in convictions or deferred adjudications. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to Exhibits 4 and 5.

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 also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes the names of the arresting and investigating officers. *See* ORD 127 at 3-4. With the exception of the basic information, the department may withhold Exhibits 2, 4, and 5 under section 552.108(a)(2).

We note portions of the basic information are subject to section 552.152 of the Government Code. Section 552.152 provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

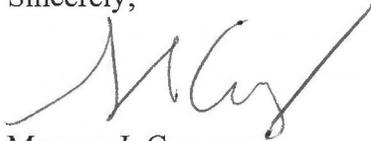
Gov't Code § 552.152. Upon review, we find the release of the undercover officers' identities would subject the officers to a substantial threat of physical harm. Accordingly, in releasing the basic information, the department must withhold the identifying information of undercover officers under section 552.152 of the Government Code.

In summary, the department must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. With the exception of the basic information, the department may withhold Exhibits 2, 4, and 5 under section 552.108(a)(2) of the Government Code. The department must withhold the identifying information of undercover officers from the basic information under section 552.152 of the Government Code and release the remaining basic information in Exhibits 2, 4, and 5.

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,

A handwritten signature in black ink, appearing to read 'Meagan J. Conway', with a long, sweeping flourish extending to the right.

Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/eb

Ref: ID# 594780

Enc. Submitted documents

c: Requestor
(w/o enclosures)