



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 19, 2016

Mr. Guillermo Trevino
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2016-21075

Dear Mr. Trevino:

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# 632798 (PIR No. W054312).

The Fort Worth Police Department (the "department") received a request for information pertaining to a specified address during a specified time period. You state you have 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.

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 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). Upon review, we find some of the submitted information 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 Exhibits C-2 and C-4 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.¹

However, we are unable to determine the age of one of the alleged offenders in Exhibit C-1. Accordingly, we must rule conditionally. Thus, if the offender at issue was ten years of age or older and under seventeen years of age at the time of the conduct at issue, Exhibit C-1 is confidential under section 58.007(c) and must be withheld under section 552.101 of the Government Code. However, if the offender at issue was not ten years of age or older and under seventeen years of age at the time of the conduct at issue, then Exhibit C-1 is not confidential pursuant to section 58.007(c) and it may not be withheld under section 552.101 on that basis. In that instance, we will address your remaining argument against disclosure of Exhibit C-1.

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(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 Exhibit C-1 pertains to a pending criminal investigation. Based on your representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of

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

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). Thus, section 552.108(a)(1) is applicable to the information at issue.

However, 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 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold the Exhibit C-1 under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in part, as follows:

(a) [T]he 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.

Fam. Code § 261.201(a). Upon review, we find Exhibit C-3 was used or developed in an investigation of alleged or suspected child abuse by the department under chapter 261 of the Family Code. See *id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); see also *id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code 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). Accordingly, we find this information is subject to chapter 261 of the Family Code. As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude Exhibit C-3 is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

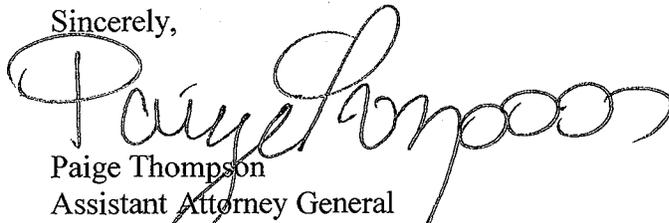
In summary, the department must withhold Exhibits C-2 and C-4 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the

offender at issue in Exhibit C-1 was ten years of age or older and under seventeen years of age at the time of the conduct at issue, Exhibit C-1 is confidential under section 58.007(c) and must be withheld under section 552.101 of the Government Code. However, if the offender at issue was not ten years of age or older and under seventeen years of age at the time of the conduct at issue, then Exhibit C-1 is not confidential pursuant to section 58.007(c) and it may not be withheld under section 552.101 on that basis. In that instance, with the exception of the basic information, the department may withhold the Exhibit C-1 under section 552.108(a)(1) of the Government Code. The department must withhold Exhibit C-3 under section 552.101 of the Government Code in conjunction with section 261.201 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 632798

Enc. Submitted documents

c: Requestor
(w/o enclosures)