ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2004

Mr. Keith Willeford
Hunt County Attorney
P.O. Box 1097
Greenville, Texas 75403-1097

OR2004-7005

Dear Mr. Willeford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207375.

The Hunt County Sheriff's Office (the "sheriff") received a request for a mugshot of the specified individual. You question whether the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and reviewed the submitted information.

Initially, we must address the sheriff's obligations under section 552.301 of the Government Code. Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving a request for information (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code §552.301(e). We note that you did not submit a copy of the information at issue within the fifteen business day deadline. We therefore find the sheriff has failed to comply with section 552.301(e) in requesting this decision.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body

demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.,* 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). The applicability of section 552.101 is such a compelling reason.

Section 552.101 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 confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) 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 Subchapter B.

Fam. Code §58.007(c). Because the information at issue pertains to juvenile conduct that occurred after September 1, 1997, we conclude that it is governed by section 58.007 of the Family Code. However, you state that the juvenile at issue has been certified to stand trial as an adult, and question whether this individual is still considered a "child" for purposes of the Family Code. You state that in the sheriff's opinion, the Family Code does not prohibit disclosure to the public of information related to a child that has been certified to stand trial as an adult. Section 51.14 of the Family Code, the predecessor provision to section 58.007, governed public disclosure of law enforcement records concerning a "child" under the Juvenile Justice Code. In relevant part, this provision stated the following:

> Except as provided by Article 15.27, Code of Criminal Procedure, and *except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution*, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public[.]

Fam. Code § 51.14(d) (repealed 1995) (emphasis added). This former provision expressly provided an exception to confidentiality for records of juvenile offenders who were certified to stand trial as an adult. However, when the 74th Legislature repealed section 51.14 and replaced it with section 58.007, it did not include any language providing such an exception to confidentiality as required by section 58.007(c). *See* Fam. Code § 58.007(c). Therefore, although an exception to confidentiality existed under the former law, the current law does not provide an exception to confidentiality. *Morrison v. Chan*, 699 S.W.2d 205, 208 (Tex. 1985) ("Every word excluded from a statute must be presumed to have been excluded for a reason."); *State v. Eversole*, 889 S.W.2d 418, 425 (Tex. App.—Houston [14th Dist.] 1994, pet. ref'd) ("when the legislature amends a particular statute and omits certain language of the former statute in its amended version, the legislature specifically intended that the omitted portion is no longer the law."); *Cook v. State*, 824 S.W.2d 634, 643 (Tex. App.—Dallas 1991, pet. ref'd) (court should give effect to intended change in statute's amendment and presume that every word excluded from amended statute must have been excluded for a purpose); *Durish v. Channelview Bank*, 809 S.W.2d 273, 277 (Tex. App.—Austin 1991, writ denied) (legislature's amendment indicates it intended to change original act by creating new right or withdrawing old one). Accordingly, the sheriff must withhold the submitted information from disclosure.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 207375

Enc. Submitted documents

c: Mr. Brad Kellar
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(w/o enclosures)