



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2006

Ms. Tamma Willis
McLennan County Sheriff's Office
219 North 6th Street
Waco, Texas 76701

OR2006-12923

Dear Ms. Willis:

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# 263397.

The McLennan County Sheriff's Office (the "sheriff") received a request for photographs of two arrested individuals. You state that you have released one of the two photographs, but claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 consists of a juvenile law enforcement record that 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, “[t]he fact that the juvenile has been certified as an adult has been held not to waive the confidentiality requirement of [s]ection 58.007.” 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 under section 552.101 in conjunction with section 58.007 of the Family Code.

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).

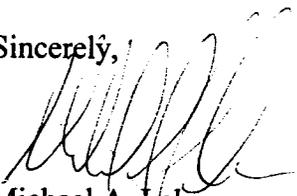
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Michael A. Lehmann
Assistant Attorney General
Open Records Division

MAL/dh

Ref: ID# 263397

Enc. Submitted documents

c: Mr. Dave Emley
KWTX News
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(w/o enclosures)