



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2010

Mr. Mack Reinwand
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004

OR2010-10154

Dear Mr. Reinwand:

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# 386064 (Arlington request no. 755-042810).

The Arlington Police Department (the "department") received a request for two specified police reports.¹ You claim 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.

Initially, we must address the department's procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (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

¹Because you have not submitted a copy of the request for information, we take our description from your brief.

Code § 552.301(e)(1)(A)-(D). In this instance, you state the department received the request for information on April 28, 2010. However, as of the date of this letter, you have failed to submit a copy of the written request for information. Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to 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 made confidential by statute, such as section 261.201(a) of the Family Code. Section 261.201(a) provides as follows:

(a) Except as provided by section 261.203, 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, and 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). The report submitted in Exhibit B pertains to the department's investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261); Penal Code § 22.04(c) (defining "child" for purposes of injury to a child as a person 14 years of age or younger). Thus, we find this report falls within the scope of section 261.201. You do not indicate the department has adopted a rule

governing the release of this type of information. Therefore, we find the report in Exhibit B is confidential pursuant to section 261.201 and must be withheld in its entirety under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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.

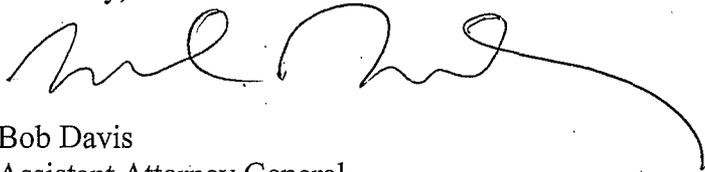
Fam. Code § 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). You claim the report submitted in Exhibit C is confidential under section 58.007(c). Upon review, this report involves a juvenile runaway. Thus, we find this information involves juvenile conduct indicating a need for supervision. *See id.* § 51.03(b)(3) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). You state the requestor is not a party entitled to inspection under section 58.007. Therefore, we conclude the report in Exhibit C is confidential under section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.

In summary, the department must withhold the report in Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, and the report in Exhibit C under section 552.101 of the Government Code in conjunction with section 58.007(c) 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a long, sweeping underline that extends to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 386064

Enc. Submitted documents

cc: Requestor
(w/o enclosures)