



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2010

Mr. John D. Lestock
Assistant City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2010-12671

Dear Mr. John D. Lestock:

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# 391232.

The Paris Police Department (the "department") received a request for information pertaining to a specified incident involving a named individual. You state the department has information pertaining to the specified incident, but the named individual was not involved. Accordingly, you state there is no information regarding the named individual.¹ You 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.

We note that the department received a previous request from this same requestor for information relating to the specified incident, as a result of which this office issued Open Records Letter No. 2010-08349 (2010). In the previous request, the requestor stated she represented a named juvenile. We found that the department could not withhold the submitted information under section 58.007(c) of the Family Code, because the requestor had a right of access under section 58.007(e) to certain information. However, we also found that, with the exception of basic information, the department could withhold the submitted information under section 552.108 of the Government Code. We noted however, that, pursuant to section 58.007(j)(1) of the Family Code, the department must redact any

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

information that identifies or tends to identify juveniles, other than the juvenile offender whom the requestor represented. In her instant request, the requestor does not state that she represents the same juvenile offender. Accordingly, to the extent the requestor represents the same juvenile as before, we find the department must continue to rely on Open Records Letter No. 2010-08349 as a previous determination and withhold or release the submitted information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requestor does not represent the same juvenile, we find that the facts, law, and circumstances have changed and the department may not rely on Open Records Letter Nos. 2010-0839 as a previous determination for the submitted information. In that instance, we will address your argument against disclosure of 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. Section 552.101 encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). The relevant language of section 58.007 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, D, and E.

Id. § 58.007(c). We have reviewed the submitted information and find it involves allegations of juvenile conduct in violation of a penal statute that occurred after September 1, 1997. It

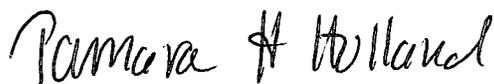
does not appear any of the exceptions in section 58.007 apply; therefore, this information is confidential pursuant to section 58.007(c) of the Family Code. Accordingly, we agree the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

In summary, to the extent the requestor represents the same juvenile as before, we find the department must continue to rely on Open Records Letter No. 2010-08349 as a previous determination and withhold or release the submitted information in accordance with that ruling. To the extent the requestor does not represent the same juvenile, the department must withhold the submitted information 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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/jb

Ref: ID# 391232

Enc. Submitted documents

c: Requestor
(w/o enclosures)