



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 10, 2010

Ms. Janet I. Monteros  
Assistant County Attorney  
County of El Paso  
500 East San Antonio, Suite 503  
El Paso, Texas 79901

OR2010-17079

Dear Ms. Monteros:

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# 399775 (CA-OP-10-345).

The El Paso County Sheriff's Office (the "sheriff") received a request for a specified incident report. You claim that a portion of the submitted information is not subject to the Act. Alternatively, you claim this information, along with the remaining information, is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you inform us that the information in Attachment B was "obtained pursuant to a grand jury subpoena[.]" You have submitted a copy of the subpoena for our review. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary, and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983); *but see* ORD No. 513 at 4 (defining limits of judiciary exclusion). We therefore conclude the information gathered in response to this subpoena is in the custody of the sheriff as an agent of the grand jury and is not subject to the Act. Thus, this ruling

does not address the public availability of this information, and the sheriff need not release it in response to this request.<sup>1</sup>

Section 552.101 of the Government Code exempts 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 that other statutes make confidential, such as section 58.007 of the Family Code, which provides in part:

(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). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. 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. *See id.* § 51.02(2). Section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather, the juvenile must be involved as a suspect, offender, or defendant. We note the suspect listed in the information in Attachment D was twenty-seven at the time of the offense. Thus, we find you have failed to demonstrate that the information at issue consists of juvenile law enforcement records for purposes of section 58.007 of the Family Code. Consequently, the information in Attachment D is not confidential under section 58.007 of the Family Code and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

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<sup>1</sup>As we are able to make this determination, we need not address your remaining arguments against the disclosure of this information.

(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.
- (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.

*Id.* § 261.201(a). The information in Attachment D relates to an investigation of alleged online solicitation of a minor. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). In this instance, the complainant at issue is a child or minor for purposes of section 261.201. *See id.* § 101.003 (defining “child” or “minor” for purposes of Fam. Code ch. 261); Penal Code § 31.021(a)(1) (defining “minor” for purposes of Penal Code § 33.021). Accordingly, we find the information in Attachment D consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). As you do not state that the sheriff has adopted a rule that governs the release of this type of information, we assume that none exists. Given that assumption, we conclude Attachment D is confidential under section 261.201(a) of the Family Code, and the sheriff must withhold the information at issue in its entirety under section 552.101 of the Government Code on that basis.

In summary, the information gathered under the grand jury subpoena is not subject to the Act, and the sheriff need not release it in response to this request. The sheriff must withhold Attachment D under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup>

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](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 cursive script, appearing to read "Kate Hartfield".

Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 399775

Enc. Submitted documents

c: Requestor  
(w/o enclosures)