



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2011

Mr. Jonathan Petix
First Assistant Criminal District Attorney
San Jacinto County
1 State Highway 150, Room 21
Coldspring, Texas 77331

OR2011-01842

Dear Mr. Petix:

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# 408298.

The San Jacinto County District Attorney's Office (the "district attorney") received two requests from the same requestor for two specified case files. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed 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."¹ Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 58.007(c) of the Family Code provides:

(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;

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

- (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). Juvenile law enforcement records relating to juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a) (defining “delinquent conduct”). 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). The submitted information includes information that pertains to juvenile delinquent conduct that occurred after September 1, 1997. Thus, this information constitutes law enforcement records that are confidential pursuant to section 58.007(c). None of the exceptions to confidentiality under section 58.007 appear to apply in this instance. Accordingly, the district attorney must withhold Exhibits A-1, A-2, and B under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.²

With regard to the remaining information, we address your claim under section 552.108 of the Government Code. Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You explain the remaining information relates to a case that has been closed and did not result in a conviction or deferred adjudication. Thus, we find the remaining information pertains to a concluded criminal investigation conducted by the district attorney that did not result in a conviction or deferred adjudication. Accordingly, we agree section 552.108(a)(2) is applicable to the remaining information and

²As our ruling is dispositive, we need not address your arguments against disclosure of this information.

the district attorney may withhold the remaining information under section 552.108(a)(2) of the Government Code.³

In summary, the district attorney must withhold Exhibits A-1, A-2, and B under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The district attorney may withhold the remaining information under section 552.108(a)(2) of the Government 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 Wilcox
Assistant Attorney General
Open Records Division

TW/vb

Ref: ID# 408298

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.