



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2011

Mr. Paul Fletcher
Assistant City Attorney
City of Eagle Pass
100 South Monroe
Eagle Pass, Texas 78852

OR2011-16784

Dear Ms. Fletcher:

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# 436490.

The Eagle Pass Police Department (the "department") received a request for information pertaining to a specified case. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the requestor's assertion that the department did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether information is excepted from public disclosure under the Act. *See* Gov't Code § 552.301(a). Section 552.301(e)(1)(A) requires the governmental body to submit to this office "written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld[.]" *Id.* § 552.301(e)(1)(A). Section 552.301(e-1) provides as follows:

A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

Id. § 552.301(e-1). The requestor provided our office with a copy of the written comments the department provided to the requestor pursuant to section 552.301(e-1). The requestor asserts the department has redacted its arguments under sections 552.101 and 552.108 of the Government Code from the requestor's copy of the department's comments. Upon review, we find the department redacted information that does not disclose or contain the substance of the information requested. We therefore conclude the department failed to comply with section 552.301(e-1) of the Government Code in requesting a decision under sections 552.101 and 552.108.

Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 at 1-2 (1991) (statutory predecessor to Gov't Code § 552.108 may be waived), 177 at 3 (1977) (same). In failing to comply with section 552.301(e-1) with regard to its claim, the department has waived section 552.108 because it is not a compelling reason to withhold the information. *See* Gov't Code § 552.302. Therefore, the department may not withhold any of the submitted information under section 552.108 of the Government Code. However, because section 552.101 of the Government Code is not a discretionary exception to disclosure, we will address the department's argument under this exception.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes, including section 58.007 of the Family Code. Section 58.007(c) reads as follows:

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.

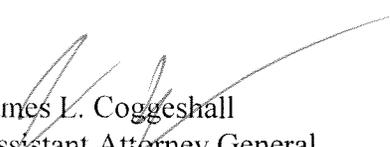
Fam. Code § 58.007(c). Upon review, we find you have established the submitted documents involve alleged juvenile delinquent conduct occurring after September 1, 1997. None of the exceptions in section 58.007 appears to apply. *See id.* §§ 51.02(2) (for purposes

of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age), 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007). Therefore, the submitted information is confidential pursuant to section 58.007(c) of the Family Code and the department must withhold it under section 552.101 of the Government Code.¹

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 436490

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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¹As our ruling is dispositive, we do not address your other arguments to withhold this information.