



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 8, 2012

Ms. Karen J. Roe  
Staff Attorney  
Texas Juvenile Justice Department  
P.O. Box 12757  
Austin, Texas 78711

OR2012-03556

Dear Ms. Roe:

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# 447251 (TJJD ORR Nos. 18397 and 18462).

The Texas Juvenile Justice Department (the "department") received two requests for information. The first requestor seeks fourteen categories of information pertaining to the death of a juvenile detained at Granbury Regional Juvenile Justice Center (the "center").<sup>1</sup> The second requestor seeks a report prepared by the department pertaining to the investigation into the death of the juvenile at the center.<sup>2</sup> You state the department has released some information to the requestors. You inform us the second requestor has withdrawn his request for the remaining information he requested.<sup>3</sup> You claim the information at issue is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information at issue.

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<sup>1</sup>As you have not submitted a copy of this request for information, we take our description of the request from your brief.

<sup>2</sup>As you have also not submitted a copy of this request for information, we take our description of the request from your brief.

<sup>3</sup>Accordingly, this ruling does not address the submitted information pertaining to TJJD ORR No. 18462.

Initially, we must address the department's responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body receiving a request for information it wishes to withhold pursuant to one of the exceptions found in the Act is required to submit to this office within fifteen business days of receiving the 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. *See* Gov't Code § 552.301(e). As of the date of this letter, the department has not submitted a copy of the written request for information. Accordingly, we conclude the department failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information sufficient to overcome this presumption. *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 (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); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.103 and 552.108 of the Government Code are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with section 552.301, the department has waived its claims under sections 552.103 and 552.108 of the Government Code. However, the need of another law enforcement agency to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. Open Records Decision No. 586 (1991). Because you inform us some information pertains to the Hood County District Attorney's Office's investigation, we will consider your claim regarding section 552.108 for that information. Additionally, your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure; therefore, we will consider the applicability of this exception to the information at issue.

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. Section 58.007 makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007. Section 58.007(c) 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;

(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.

*Id.* § 58.007(c); *see also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age at the time of the conduct). Upon review, we find most of the information at issue involves a juvenile engaged in delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of section 58.007). However, Attachment C, which consists of a custodial death report, does not constitute a juvenile law enforcement record. Thus, except for Attachment C, we find the information at issue is confidential under section 58.007 and the department must withhold it under section 552.101 on that basis.<sup>4</sup>

You assert the custodial death report submitted as Attachment C is confidential under section 552.101 of the Government Code in conjunction with article 49.18 of the Code of Criminal Procedure. Section 552.101 also encompasses article 49.18 which provides that with the exception of any portion of the custodial death report that the Office of the Attorney General (“OAG”) determines is privileged, the OAG shall make the report public. Code Crim. Proc. art.49.18(b). The format of the report was revised in May 2006 and the OAG has determined the report and attached summary of how the death occurred must be released to the public but that any other documents submitted with the report are confidential under article 49.18(b). Accordingly, Attachment C may not be withheld under section 552.101 in conjunction with article 49.18 of the Code of Criminal Procedure and it must be released.

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<sup>4</sup>As our ruling is dispositive for this information, we need not address your arguments against its disclosure.

In summary, except for the custodial death report submitted as Attachment C, the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 58.007 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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/akg

Ref: ID# 447251

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)