



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 11, 2012

Ms. Dana Colbert  
Records Coordinator  
Office of the General Counsel  
Texas Juvenile Justice Department  
P.O. Box 12757  
Austin, Texas 78711

OR2012-05181

Dear Ms. Colbert:

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# 450268 (ORR No. 18564).

The Texas Juvenile Justice Department (the "department") received a request for several categories of information related to the department's policies and procedures, a former department employee, and a specified incident.<sup>1</sup> You claim the submitted information is exempted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note the department has not submitted information responsive to the requested policies and procedures. Although you state the department submitted a representative sample of information, no portion of the submitted representative sample pertains to the requested policies and procedures. Thus, we find the submitted information is not representative of the information responsive to the policies and procedures. Please be advised this open records letter applies to only the types of information you have submitted

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<sup>1</sup>You inform us the department received clarification regarding the scope of the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

<sup>2</sup>We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

for our review. Therefore, this ruling does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301 of the Government Code, information at issue is presumed to be public). Thus, to the extent the requested policies and procedures existed and were maintained by the department on the date the department received the request for information, we presume the department has released such information. If not, the department must do so at this time. *See id.* §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

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 the information in Exhibit D 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). Thus, Exhibit D is confidential under section 58.007 and the department must withhold it under section 552.101 on that basis.<sup>3</sup>

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<sup>3</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to records of an internal investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). You state, and submit a letter from the department’s Office of the Inspector General explaining, the information in Exhibit C relates to a pending criminal investigation. Based on your representation and our review, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, you may withhold Exhibit C under section 552.108(a)(1) of the Government Code.<sup>4</sup>

Section 552.101 of the Government Code also encompasses section 244.003 of the Human Resources Code.<sup>5</sup> Section 244.003 provides as follows:

(a) The department shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control.

(b) Except as provided by Section 243.051(c), these records and all other information concerning a child, including personally identifiable information, are not public and are available only according to the provisions of Section 58.005, Family Code, Section 244.051, and Chapter 61, Code of Criminal Procedure.

Hum. Res. Code § 244.003. For the purposes of section 244.003 of the Human Resources Code, a “child” includes an eighteen year old committed to the department. *Id.* § 201.001(a)(2)(b). You state the information in Exhibit B contains personally

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>5</sup>We note the 82nd Texas Legislature passed Senate Bill 653, which redesignated section 61.073 of the Human Resource Code as section 244.003 of the Human Resource Code. Act of May 9, 2011, 82nd Leg., R.S., S.B. 653, § 1.007.

identifiable information relating to a child in the custody of the department, and thus, is within the scope of section 244.003. You state the requestor does not have a right of access to the information at issue under section 58.005 of the Family Code because although he represents an employee of the department, he is seeking the information for his private use, as a member of the public. Further, the submitted information does not indicate the requestor has a right of access to the information under section 243.051(c) of the Human Resources Code, section 244.051 of the Human Resources Code, or chapter 61 of the Code of Criminal Procedure. Based on your representations and our review, we find section 244.003 is applicable to Exhibit B. We therefore conclude the department must withhold Exhibit B pursuant to section 552.101 of the Government Code in conjunction with section 244.003 of the Human Resources Code.<sup>6</sup>

In summary, the department must withhold the information in Exhibit D under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department may withhold the information in Exhibit C under section 552.108(a)(1) of the Government Code. The department must withhold the information in Exhibit B under section 552.101 of the Government Code in conjunction with section 244.003 of the Human Resources 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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

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<sup>6</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Ref: ID# 450268

Enc. Submitted documents

c: Requestor  
(w/o enclosures)