



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 13, 2013

Ms. Lysia H. Bowling  
City Attorney  
City of San Angelo  
P.O. Box 1751  
San Angelo, Texas 76902

OR2013-04226

Dear Ms. Bowling:

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# 481331.

The San Angelo Police Department (the "department") received a request for a specified incident involving the requestor for a specified time period. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you acknowledge the department did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. Gov't Code § 552.301(a)-(b). 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 unless a compelling reason exists to withhold the information from disclosure. *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, 381-82 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. Open Records Decision No. 150 at 2 (1977). You raise

section 552.101 as an exception to disclosure. As section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception to 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." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides in pertinent part as follows:

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j)(2). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a) (defining juvenile “delinquent conduct” for purposes of section 58.007). 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). Upon review, we find the submitted information involves juvenile delinquent conduct occurring after September 1, 1997. Therefore, the submitted information is within the scope of section 58.007(c). However, the requestor is the suspect listed in the submitted report. Therefore, the requestor has a right to inspect or copy his own law enforcement records. *See id.* § 58.007(e). Section 58.007(j) provides, however, information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). Accordingly, we will consider your argument under section 261.201 of the Family Code.

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

(a) [T]he 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; and
- (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.

Fam. Code § 261.201(a). You contend the submitted information consists of a report of alleged or suspected abuse. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse. Accordingly, we find this information is subject to chapter 261 of the Family Code. As we have no indication the department has adopted a rule that governs the release of this type of information, we assume no such rule exists. Therefore, we conclude the submitted information is confidential under section 261.201(a). Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 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,

A handwritten signature in black ink, appearing to read "Kathleen J. Santos". The signature is written in a cursive, flowing style.

Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/som

Ref: ID# 481331

Enc. Submitted documents

c: Requestor  
(w/o enclosures)