



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 18, 2013

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2013-10254

Dear Mr. Weir:

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# 491000 (COSA No. W013882).

The City of San Antonio (the "city") received a request for information related to a specified case number involving the requestor's child. 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, we must address the obligations of the city under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Gov't Code § 552.301. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) 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. *Id.* § 552.301(e). You state the city received the request

for information on March 7, 2013. Thus, the city was required to request a decision from this office by March 21, 2013, and to submit the information required by section 552.301(e) by March 28, 2013. However, the envelope in which you submitted the request for a decision and the information required by section 552.301(e) bears a meter mark of April 16, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we find the city failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information 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, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because section 552.101 can provide a compelling reason for non-disclosure, we will consider 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 exception encompasses information made confidential by other statutes. Section 261.201 of the Family Code provides in part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

Fam. Code § 261.201(a), (h). You contend the submitted information is confidential under section 261.201(a). In this instance, however, the information at issue is related to an incident that allegedly occurred in a home or facility regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code. Section 261.201 does not apply to an investigation of alleged or suspected child abuse or neglect in a home or facility regulated under chapter 42. *Id.* § 261.201(h). Therefore, section 261.201(a) of the Family Code is not applicable to the information at issue, and the city may not withhold the submitted information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code which provides in relevant part:

(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). Section 58.007(c) is applicable to records of delinquent conduct that occurred on or after September 1, 1997. *See id.* § 51.03(a)(defining “delinquent conduct” for purposes of section 58.007(c) of Family Code). The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of section 58.007(c) of Family Code). The information at issue involves delinquent conduct that occurred after September 1, 1997. However, we are unable to determine the age of the offender whose conduct is at issue. Accordingly, we must rule conditionally. It does not appear any of the exceptions in section 58.007 apply to the submitted information. Thus, to the extent the offender identified in the report was ten years of age or older and under seventeen years of age at the time of the incident, the submitted information is confidential pursuant to section 58.007(c) of the Family Code and must be

withheld in its entirety under section 552.101 of the Government Code. However, if the submitted information pertains to an offender who was not ten years of age or older and under seventeen years of age at the time of the incident, the submitted information is not confidential pursuant to section 58.007(c) and may not be withheld under section 552.101 on that basis. In that instance, the submitted information must be released to the requestor.<sup>1</sup>

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,



Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 491000

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>In that instance, we note the requestor would have a special right of access to some of the information being released. Gov't Code § 552.023. Thus, should the city receive another request from a different requestor, it should again seek a ruling from this office.