



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2013

Mr. Michael M. Kelly
Assistant Criminal District Attorney
Criminal District Attorney's Office
County of Victoria
205 North Bridge Street, Suite 301
Victoria, Texas 77901

OR2013-13715

Dear Mr. Kelly:

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# 495656.

The Victoria County Juvenile Services Department (the "department") received a request for the reports and calls related to three named individuals at either of two specified addresses during 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 representative sample of information.¹

Initially, we must address the department's obligations under section 552.301 of the Government Code, which 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 must submit to this office

¹We assume the "representative sample" of records 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 those records contain substantially different types of information than that submitted 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. *See* Gov't Code § 552.301(e). The department received the request for information on May 16, 2013. We understand the department was closed for business on May 27, 2013. Accordingly, you were required to provide the information required by subsection 552.301(e) by June 7, 2013. However, the envelope in which the department provided the information required by subsection 552.301(e) was postmarked June 20, 2013. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the department failed to comply with the procedural requirements mandated by 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 procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. As section 552.101 can provide a compelling reason to overcome the presumption that the requested information is public, we will address the applicability of section 552.101 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. Section 552.101 encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Section 58.007 provides in relevant part the following:

(b) Except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under [Title 3 of the Family Code] may be inspected or copied only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

- (2) a juvenile justice agency as that term is defined by Section 58.101;
- (3) an attorney for a party to the proceeding;
- (4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- (5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

...

(i) In addition to the authority to release information under Subsection (b)(5), a juvenile probation department may release information contained in its records without leave of the juvenile court pursuant to guidelines adopted by the juvenile board.

Act of May 13, 2013, 83rd Leg., R.S., S.B. 670, § 1 (to be codified as an amendment to Fam. Code § 58.007(b)); Fam. Code § 58.007(i). The submitted information consists of records maintained by the department concerning a juvenile offender. We understand the submitted information relates to a juvenile who was a party to proceedings under the Juvenile Justice Code, title 3 of the Family Code, and the requestor is not a person or entity authorized to access this information under section 58.007(b). However, as a juvenile probation department, the department has the discretion to release the requested information pursuant to guidelines adopted by the juvenile board. *See* Fam. Code § 58.007(i). You do not inform us the juvenile board has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption and based on our review of the submitted information, we conclude the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(b) 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle R. Garza". The signature is fluid and cursive, with a long horizontal line extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 495656

Enc. Submitted documents

c: Requestor
(w/o enclosures)