



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 3, 2013

Ms. Mandy Smithers  
Custodian of Records  
Denton County Sheriff's Office  
127 North Woodrow Lane  
Denton, Texas 76205

OR2013-15314

Dear Ms. Smithers:

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# 498126.

The Denton County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the information we have marked is not responsive to the instant request because it does not pertain to the incident specified by the requestor. This ruling does not address the public availability of non-responsive information, and the sheriff's office is not required to release non-responsive information in response to this request.

Next, we must address the sheriff's office's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See* Gov't Code § 552.301(b). The sheriff's office received the request for information on June 10, 2013. Thus, the sheriff's office's ten-business-day deadline was June 24, 2013. The envelope in which the sheriff's office sent its request for a ruling is post-marked June 25, 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). Consequently, the sheriff's office failed to comply with the requirements of section 552.301(b) 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). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). We note section 552.108 of the Government Code is discretionary in nature. This exception serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, no portion of the submitted information may be withheld under section 552.108. However, your claim under section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness. Therefore, 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. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which provides, in pertinent 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.

...

(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:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child[.]

Fam. Code § 58.007(c), (e), (j)(1). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a) (defining "delinquent conduct"). 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 report numbers 13-001567 and 13-001135 involve juvenile delinquent conduct that occurred after September 1, 1997. Thus, report numbers 13-001567 and 13-001135 are generally confidential under section 58.007(c). It does not appear any of the exceptions apply to report number 13-001567. Therefore, the sheriff's office must withhold report number 13-001567 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, you indicate the requestor is a guardian of the juvenile offender at issue in report number 13-001135. Therefore, in accordance with section 58.007(e), the sheriff's office may not use section 58.007(c) to withhold report number 13-001135 from this requestor. *See id.* § 58.007(e). However, section 58.007(j)(1) provides that any identifiable information about a juvenile victim or witness must be redacted. *Id.* § 58.007(j)(1). A juvenile victim or witness for purposes of section 58.007(j)(1) is a person who is under eighteen years of age. Therefore, the sheriff's office must withhold the information we have marked in report number 13-001135 under section 552.101 in conjunction with section 58.007(j)(1). As you raise no further exceptions to disclosure, the remaining information must be released to this 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.

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<sup>1</sup>Because this requestor has a right of access under section 58.007(e) to information the sheriff's office would be required to withhold from the general public, the sheriff's office should request another decision if it receives a request for this same information from a different requestor. *See Gov't Code* §§ 552.301(a), .302.

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](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 cursive script that reads "Britni Fabian".

Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/dls

Ref: ID# 498126

Enc. Submitted documents

c: Requestor  
(w/o enclosures)