



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 13, 2013

Ms. Lysia H. Bowling
City Attorney
City of San Angelo
72 West College Avenue
San Angelo, Texas 76903-5814

OR2013-21753

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# 508577.

The San Angelo Police Department (the "department") 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.

We first note, and 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. *See Gov't Code* § 552.301(b). In addition, we note the department did not comply with its fifteen-business-day deadline under section 552.301(e). *See id.* § 552.301(e). A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information from disclosure. *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although you raise section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *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). Accordingly, the department may not withhold any of the submitted information under section 552.108. However, you also assert the submitted information is subject to section 552.101 of the Government Code. Because the department's claim under section 552.101 can provide a compelling reason for non-disclosure, we will address the department's argument under this exception.

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. Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Fam. Code § 58.007(c). The relevant language of section 58.007 reads 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.

Id. § 58.007(c). 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 at the time of the reported conduct. *See id.* § 51.02(2). The submitted information involves allegations of delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). However, we are unable to determine the ages of the offenders in Exhibit B. Accordingly, we must rule conditionally. It does not appear any of the exceptions to confidentiality under section 58.007 apply in this instance. Thus, to the extent any of the offenders identified in Exhibit B were ten years of age or older and under seventeen years of age at the time of the conduct at issue, Exhibit B is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. However, to the extent none of the offenders at issue were ten years of age or older and under seventeen years of age at the time of the conduct at issue, Exhibit B is not confidential pursuant to section 58.007(c) and may not be withheld under section 552.101 of the Government Code

on that basis. In that instance, as you raise no further exceptions to disclosure, Exhibit B must be released.¹

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 508577

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹In that instance, we note the information being released contains the requestor's motor vehicle record information, which is ordinarily excepted from public disclosure under section 552.130 of the Government Code. Because this section protects privacy, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code. Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). The department is authorized to redact motor vehicle record information under section 552.130(c), without the necessity of requesting a decision under the Act. *See* Gov't Code § 552.130(c). Thus, should the department receive another request for the same information from a different requestor, the department is authorized to withhold the requestor's motor vehicle record information without requesting another ruling. If the department redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

