



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 18, 2014

Ms. Lauren F. Crawford
Counsel for the City of Pflugerville
Denton, Navarro, Rocha & Bernal, P.C.
2500 West William Cannon, Suite 609
Austin, Texas 78745

OR2014-02933

Dear Ms. Crawford:

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# 514318 (City PIR No. W000833-111513).

The City of Pflugerville (the "city"), which you represent, received a request for the name and date of birth of shooting victims involved in fatal and non-fatal officer-involved shootings during a specified time frame. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed 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. You raise section 552.101 in conjunction with confidentiality provisions found in chapter 55 of the Code of Criminal Procedure for the submitted information. Articles 55.01 through 55.05 of the Code of Criminal Procedure provide for the expunction of criminal records in certain limited circumstances. Article 55.03 prescribes the effect of an expunction order and provides:

When the order of expunction is final:

- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;

¹Although you also raised sections 552.103 and 552.108 of the Government Code as exceptions to disclosure, you provided no arguments regarding the applicability of these sections. Accordingly, we assume you no longer assert these sections. See Gov't Code §§ 552.301, .302.

(2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and

(3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Crim. Proc. Code art. 55.03. Article 55.04 imposes sanctions for violations of an expunction order and provides in part:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

Id. art. 55.04, § 1. This office has determined the expunction statute prevails over the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as “those records are not subject to public disclosure under the [Act]”). You contend the submitted information may contain information that is the subject of an expunction order, and you seek to withhold that information under article 55.03 of the Code of Criminal Procedure. However, you have not submitted a copy of an expunction order for the information at issue. We nevertheless conclude to the extent the submitted information is the subject of an expunction order, the city must withhold any such information under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure. To the extent the information at issue is not the subject of an expunction order, the city may not withhold it under section 552.101 on the basis of article 55.03, and the city must dispose of any such information in accordance with the rest of this ruling.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). The relevant portion of section 58.007 provides:

(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.

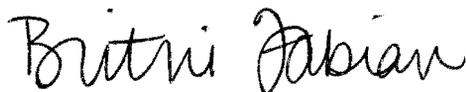
Id. § 58.007(c). *See also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age when the conduct occurred). Upon review, we find the submitted information involves delinquent conduct by a child that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of section 58.007). Further, it does not appear that any of the exceptions in section 58.007 apply. Therefore, the submitted information is confidential under section 58.007(c) of the Family Code and the city must withhold it under section 552.101 of the Government Code.

In summary, to the extent the submitted information is the subject of an expunction order, the city must withhold any such information under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure. To the extent the submitted information is not the subject of an expunction order, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/tch

Ref: ID# 514318

Enc. Submitted documents

c: Requestor
(w/o enclosures)