



August 1, 2001

Mr. Joe F. Grubbs
District Attorney
Ellis County
1201 North Highway 77, Suite B
Waxahachie, Texas 75165-5140

OR2001-3350

Dear Mr. Grubbs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150152.

The Ellis County Sheriff's Department (the "sheriff") received a request for "any 911 tapes or dash cam recordings of the Ennis High School Shooting that occurred on May 15, 2001." You inform us that the sheriff does not have any dash cam recordings, but claim that a responsive 911 tape of the initial report of the shooting is excepted from disclosure under section 552.101 of the Government Code. Concerning any dash cam recordings, the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). With regard to the submitted 911 tape, we have considered the exception you claim and reviewed the submitted information.

Initially, we address your assertion that a tape of a 911 call relating to the same incident at issue here has been released to the public. Section 552.007 of the Government Code prohibits a governmental body from selectively disclosing information that is not confidential by law but that a governmental body may withhold under a discretionary exception to public disclosure. However, in this case, as you inform us that the sheriff has not released the 911 tape in his possession, and as you raise a statute that makes information confidential by law, we will address the applicability of your raised exception to the submitted information.

Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) 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 Subchapter B.

The information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Further, we do not believe that section 58.007 is intended solely to protect the privacy interests of the subject juvenile. Therefore, we do not believe that the fact that the subject juvenile is now deceased takes the information at issue outside the ambit of section 58.007. Accordingly, the submitted 911 tape is confidential under section 58.007 of the Family Code and must thus be withheld from disclosure under section 552.101 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 150152

Enc. Submitted documents

c: Ms. Deitria Coleman
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Fort Worth, Texas 76102
(w/o enclosures)