



June 18, 2002

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2002-3298

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164482.

The College Station Police Department (the “department”) received a request for all documents related to a specified incident and investigation. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

First, we note that the submitted medical records appear to constitute grand jury records. Article 20.02 of the Code of Criminal Procedure provides for the secrecy of grand jury proceedings. This office has concluded that grand juries are not governmental bodies that are subject to chapter 552 of the Government Code and that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Open Records Decision No. 513 (1988); *see also* Gov’t Code § 553.003. When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury’s constructive possession and is not subject to chapter 552. Open Records Decision No. 513 at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld from disclosure only if a specific exception to disclosure is applicable. *Id.* The submitted medical documents were apparently obtained pursuant to a grand jury subpoena. To the extent that this information is in the department’s custody as agent of the grand jury, it is not subject to disclosure under chapter 552. *Id.* at 4.

We now address your claim under section 552.101 for the remaining information. Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred.¹ 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. You represent that none of the exceptions in section 58.007 apply; therefore, this information is confidential pursuant to section 58.007(c) of the Family Code. You must withhold the information from disclosure in its entirety under section 552.101 of the Government Code. As we are able to make this determination, we need not address your other arguments under section 552.101.

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.

¹ See Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code).

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).

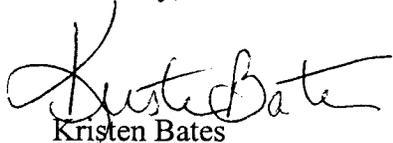
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 164482

Enc. Submitted documents

c: Mr. Jack W. Dillard
P.O. Box 192
Bryan, Texas 77806
(w/o enclosures)