



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 31, 2003

The Honorable Chris Hamilton  
Montague County Sheriff  
P. O. Box 127  
Montague, Texas 76251

OR2003-9417

Dear Sheriff Hamilton:

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# 193454.

The Montague County Sheriff's Office (the "office") received a request for all reports concerning a specific individual. You claim that the requested information is excepted from disclosure under 552.101 of the Government Code in conjunction with various provisions of state law. We have considered the exceptions you claim and reviewed the submitted information.

We begin by noting that some of the information submitted in exhibit C does not relate to the current request. We have marked this non-responsive information, which need not be released to the requestor in this instance.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Section 552.101 thereby encompasses the confidentiality provisions of sections 58.007 and 261.201 of the Family Code and sections 576.005 and 611.002 of the Health and Safety Code.

You claim that the information submitted as exhibit C is made confidential by section 58.007 of the Family Code. Section 58.007(c) makes confidential 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. Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75<sup>th</sup> Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been 10 years of age or older and under 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). We have marked a report included

in exhibit C that does not concern conduct by a juvenile offender and therefore cannot be subsumed under section 58.007; this report must be released to the requestor. We have marked the remaining reports as juvenile law enforcement records that are confidential under section 58.007. Accordingly, the office must withhold these reports from disclosure under section 552.101 of the Government Code as information made confidential by law.

Next, you claim that the information submitted as exhibit B is made confidential by section 261.201 of the Family Code. Section 261.201(a) provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The information in Exhibit B was used or developed in an investigation of child abuse. The information is therefore confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the office must withhold Exhibit B from disclosure under section 552.101 of the Government Code as information made confidential by law.<sup>1</sup>

Finally, you claim that the information submitted as exhibit D is made confidential by sections 576.005 of the Health and Safety Code. Section 576.005 makes confidential records of a mental health facility that directly or indirectly identify a present, former, or proposed patient unless disclosure is permitted by other state law. You state that exhibit D comprises a record of a mental health facility and that this record identifies a present, former, or proposed patient. The confidentiality provision of section 576.005 therefore applies to exhibit D. We are unaware of any other state law that would permit disclosure of this

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<sup>1</sup>We note that if the investigation has been referred to the Department of Protective and Regulatory Services (the "DPRS"), a parent who is a requestor may be entitled to access to the DPRS's records. Section 261.201(g) of the Family Code provides that DPRS, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if [DPRS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

information under the present circumstances. Accordingly, the department must withhold the information contained in exhibit D under section 552.101 of the Government Code as information made confidential by law.<sup>2</sup>

In summary, the office need not release the information which we have marked as non-responsive to the current request. The information marked as exhibit B must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The information in exhibit C that we have marked must be released to the requestor; the remaining information in exhibit C must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The information in exhibit D must be withheld under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety 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).

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<sup>2</sup>As we have determined that section 576.005 applies to the information in question, we decline to address the applicability of section 611.002.

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 Dep't of Pub. 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,



Steven W. Bartels  
Assistant Attorney General  
Open Records Division

SWB/lmt

Ref: ID# 193454

Enc. Submitted documents

c: Ms. Joy Jacobs  
P. O. Box 108  
Forestburg, Texas 76239  
(w/o enclosures)