ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2006

Mr. Asem Eltiar
Assistant City Attorney
City of Arlington Police Department
Legal Division - MS 04-0200
P. O. Box 1065
Arlington, Texas 76004-1065

OR2006-05027

Dear Mr. Eltiar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 249404.

The Arlington Police Department (the "department") received a request for information pertaining to the April 1, 2005 death of a named individual. You assert that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted to this office by the requestor. *See* Gov't Code § 552.304.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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 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.

Fam. Code §58.007(c). Because the information at issue pertains to juvenile conduct that occurred after September 1, 1997, we conclude that it is governed by section 58.007 of the Family Code. However, the requestor states that the juvenile at issue has been certified to stand trial as an adult, and argues that the juvenile is no longer considered a "child" for purposes of the Family Code. Thus, according to the requestor, the Family Code does not prohibit disclosure to the public of information related to a child that has been certified to stand trial as an adult. In this regard, we note that section 51.14 of the Family Code, the predecessor statute to section 58.007, governed public disclosure of law enforcement records concerning a "child" under the Juvenile Justice Code. In relevant part, this provision stated the following:

> Except as provided by Article 15.27, Code of Criminal Procedure, and *except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution*, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public[.]

Fam. Code § 51.14(d) (repealed 1995) (emphasis added). This former provision expressly provided an exception to confidentiality for records of juvenile offenders who were certified to stand trial as an adult. However, when the 74th Legislature repealed section 51.14 and replaced it with section 58.007, it did not include any language providing such an exception to confidentiality as required by section 58.007(c). *See* Fam. Code § 58.007(c). Therefore, although an exception to confidentiality for records of juvenile offenders who were certified to stand trial as an adult existed under the former law, the current law does not provide such an exception to confidentiality. *Morrison v. Chan*, 699 S.W.2d 205, 208 (Tex. 1985) ("Every word excluded from a statute must be presumed to have been excluded for a reason."); *State v. Eversole*, 889 S.W.2d 418, 425 (Tex. App.—Houston [14th Dist.] 1994, pet. ref'd) ("when the legislature amends a particular statute and omits certain language of the former statute in its amended version, the legislature specifically intended that the omitted portion is no longer the law."); *Cook v. State*, 824 S.W.2d 634, 643 (Tex. App.—Dallas 1991, pet. ref'd) (court should give effect to intended change in statute's amendment and presume that every word excluded from amended statute must have been excluded for a purpose); *Durish v.*

Channelview Bank, 809 S.W.2d 273, 277 (Tex. App.— Austin 1991, writ denied) (legislature's amendment indicates it intended to change original act by creating new right or withdrawing old one). Accordingly, the department must withhold the submitted information from the requestor 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 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 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,

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/krl

Ref: ID# 249404

Enc. Submitted documents

c: Mr. Daniel J. Smith
Smith & Smith
6300 Ridglea, Suite 617
Fort Worth, Texas 76116
(w/o enclosures)