



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 9, 2007

Mr. Daniel Bradford
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2007-10214

Dear Mr. Bradford:

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# 286138.

The Travis County Sheriff's Office (the "sheriff") received a request for any information pertaining to two named individuals during a specified period of time. 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 reviewed the submitted information.

Initially, we must address the sheriff's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. The sheriff received the request for information on May 14, 2007, but did not request a ruling from this office until June 5, 2007. Thus, we find, and you acknowledge, that the sheriff failed to comply with the procedural requirement mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.101 of the Government Code can

provide a compelling reason to overcome this presumption; therefore, we will consider the sheriff's claim under this exception.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, such as section 261.201(a) of the Family Code. Section 261.201(a) provides as follows:

(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 alleged or suspected abuse or neglect 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we determine that report number 070012432 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. *See id.* § 261.001 (defining "abuse" and "neglect" for purposes of Family Code, ch. 261). Thus, this information is within the scope of section 261.201 of the Family Code. Accordingly, report number 070012432 is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101.¹

Section 552.101 also encompasses 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. Section 58.007(c) provides in pertinent part 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;

¹We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child's parent(s) may have the right to review that file. *See* Fam. Code § 261.201(g).

(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). Report number 070012410 pertains to a report of a juvenile runaway that occurred after September 1, 1997. This conduct is within the scope of section 58.007. *See id.* § 51.03(b)(3) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from the child’s home without the consent of the child’s parent or guardian for a substantial length of time or without intent to return”). It does not appear that any of the exceptions in section 58.007 apply; therefore, report number 070012410 is confidential under section 58.007 and must be withheld under section 552.101 of the Government Code.²

You seek to withhold a portion of report number 070012238 under section 58.007. While this report contains references to other incidents involving a juvenile offender, report number 070012238 does not list a juvenile as a suspect or offender for the incident that is the basis for the report. Therefore, we find that this report is not a juvenile law enforcement record and no portion of it may be withheld under section 552.101 in conjunction with section 58.007(c). We note, however, that the doctrine of common law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007. We find that the sheriff would normally have to withhold some of the remaining submitted information under common law privacy. However, as a parent of the minor with the privacy interest, the requestor has a special right of access to information that would ordinarily be withheld to protect the minor’s common law privacy, and such information cannot be withheld from her on that basis. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on grounds that information is considered confidential by privacy principles).

Next, we address your claim under section 552.101 in conjunction with section 411.083 of the Government Code. Criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it

²We note that the requestor is the parent of the juvenile mentioned as an alleged runaway in this report. Effective September 1, 2007, child offenders’ parents or guardians may have the right to inspect or copy law enforcement records pertaining to their own children. Act effective Sep. 1, 2007, 80th Leg., R.S., ch. 879, 2007 Tex. Sess. Law Serv. (H.B. 1960) (Vernon) (to be codified as an amendment to Tex. Fam. Code § 58.007).

generates. *Id.* Section 411.083 deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with subchapter F of chapter 411 of the Government Code. After reviewing the remaining information, we find that none of it is CHRI that is excepted from required public disclosure under section 552.101 in conjunction with chapter 411 and federal law.

In summary, report number 070012432 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Report number 070012410 must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The remaining information must be released to the requestor.³

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the

³As our ruling is dispositive, we need not address your remaining argument.

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 Office of the Attorney General 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,



M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/eeg

Ref: ID# 286138

Enc. Submitted documents

c: Ms. Trina Devine
2243 North Silverton Street
Mesa, Arizona 85203
(w/o enclosures)