



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2013

Mr. Tillman S. Roots
Assistant District Attorney
Comal County Criminal District Attorney's Office
150 North Seguin, Suite 307
New Braunfels, Texas 78130

OR2013-01169

Dear Mr. Roots:

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# 477702 (Comal County File No. 12-OR-118).

The Comal County Sheriff's Office (the "sheriff's office") received a request for case number 12-10-1827 and reports for incidents at a specified location on two specified dates involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have submitted only information relating to case number 12-10-1827 and have not submitted any information pertaining to the other two incidents described in the request. Thus, to the extent information pertaining to the other two incidents existed and was maintained by the sheriff's office on the date the sheriff's office received the request for information, we presume the sheriff's office has released it. If not, the sheriff's office must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

Next, you acknowledge, and we agree, the sheriff's office did not comply with its fifteen-business-day deadline under section 552.301(e) of the Government Code in requesting this decision. Gov't Code § 552.301(e). 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 information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because the claims of the sheriff's office under sections 552.101 and 552.130 of the Government Code can provide compelling reasons for non-disclosure under section 552.302, we will consider the applicability of these exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes such as section 58.007 of the Family Code, which 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;

(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 Subchapters B, D, and E.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). The information at issue involves a child engaged in delinquent conduct that occurred after September 1, 1997. As such, this information constitutes a juvenile law enforcement record that is confidential pursuant to section 58.007(c). It does not appear that any of the exceptions to confidentiality under

section 58.007 apply in this instance. Accordingly, the sheriff's office must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 477702

Enc. Submitted documents

c: Requestor
(w/o enclosures)