



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 12, 2013

Mr. Michael L. Garza  
Assistant District Attorney  
Hidalgo County  
100 North Closner Boulevard, Room 303  
Edinburg, Texas 78539

OR2013-02422

Dear Mr. Garza:

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# 479032.

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for all documents pertaining to a specified address during a specified period of time. You state you have released some information to the requestor. You claim the submitted 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 office's obligations under section 552.301 of the Government Code, which prescribes the procedures 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. *See* Gov't Code § 552.301(b). You state, and the submitted information reflects, the sheriff's office received the present request for information on November 6, 2012. You inform us Hidalgo County observed a countywide holiday on November 12, 2012. Thus, the sheriff's office's ten-business-day deadline under section 552.301(b) was November 21, 2012. Although you state the sheriff's office sent its request for a decision from this office on November 14, 2012, we did not received any such correspondence. The envelope containing the sheriff's office's request for a ruling bears a postmark date of November 30, 2012. *See id.* § 552.308 (describing rules for calculating

submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we conclude the sheriff's office failed to comply with the procedural requirements 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 the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *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); *see also* Open Records Decision No. 630 (1994). 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). You raise section 552.101 of the Government Code, which can provide a compelling reason to withhold information. Accordingly, we will address the applicability of this section to the submitted information.

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. Section 552.101 of the Government Code encompasses 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(c). *See id.* § 51.03 (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. *See id.* § 51.02(2). Upon review, we find the information in Exhibit B consists of law enforcement

records that involve conduct indicating a need for supervision that occurred after September 1, 1997. Therefore, the information in Exhibit B is confidential under section 58.007(c) of the Family Code. It does not appear any of the exceptions to confidentiality under section 58.007 apply in this instance. Accordingly, the sheriff's office must withhold Exhibit B under section 552.101 in conjunction with section 58.007(c) of the Family Code.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, 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, audiotapes, videotapes, 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). You state the information in Exhibit C was used in a child abuse investigation. *See id.* § 261.001(1)(E) (definition of "abuse" includes indecency with a child under Penal Code section 21.11); *see also* Penal Code § 21.11 (defining "child" for purposes of section 21.11 as a minor younger than 17 years of age). Thus, we find Exhibit C is subject to chapter 261. As you have not indicated the sheriff's office has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Accordingly, we conclude Exhibit C is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.

In summary, the sheriff's office must withhold Exhibit B under section 552.101 in conjunction with section 58.007(c) of the Family Code and Exhibit C under section 552.101 in conjunction with section 261.201(a) of the Family Code.

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](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,

A handwritten signature in black ink, appearing to read 'Melanie J. Villars', with a stylized, cursive script.

Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/dls

Ref: ID# 479032

Enc. Submitted documents

c: Requestor  
(w/o enclosures)