



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2014

Mr. Jose Hernandez
Records Supervisor
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2014-03843

Dear Mr. Hernandez:

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# 517563 (Edinburg Ref. No. 59881).

The Edinburg Police Department (the "department") received a request for the personnel file of a named individual and the booking records of anyone booked into jail or released by the department on two specified dates. The department states it is withholding and releasing some of the requested information in accordance with Open Records Letter No. 2013-18305 (2013). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note you inform us the department has released the requested booking records, with the exception of the submitted information pertaining to case number 2013-00002598. However, you did not submit the requested personnel file and you do not inform us you have released this information. We assume, to the extent any additional responsive information existed when the department received the request for information, the department has released it to the requestor. If not, then the department must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

We must next address the department's procedural 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. You inform us the department received the request for information on December 23, 2013. We understand the department was closed on December 24 and 25, 2013, and January 1, 2014. You do not inform us the department was closed on any other dates. Thus, the department's ten-business-day deadline to request a ruling was January 9, 2014. However, the envelope containing your request for a ruling from this office is meter-marked January 14, 2014. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, the department 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 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 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). Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption. Therefore, we will consider whether this section requires the department to withhold 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. This section encompasses information protected by other statutes, including section 58.007 of the Family Code. Section 58.007(c) reads as follows:

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

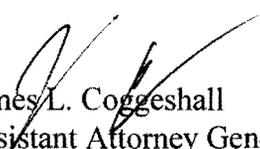
(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). You assert the submitted information pertaining to case number 2013-00002598 is confidential under section 58.007. Upon review, we find this information involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (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 when the conduct occurred), .03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). The exceptions in section 58.007 do not appear to apply. Therefore, the department must withhold the submitted information pertaining to case number 2013-00002598 under section 552.101 of the Government Code in conjunction with section 58.007(c) 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 517563

Enc. Submitted documents

c: Requestor
(w/o enclosures)