



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 22, 2015

Ms. Melanie Barton  
Assistant District Attorney  
Dallas County  
411 Elm Street, 5th Floor  
Dallas, Texas 75202-3317

OR2015-14916

Dear Ms. Barton:

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# 572547.

Dallas County (the "county") received a request for all jail booking records during a specified time period for individuals aged 17, 18, or 19 pertaining to specified offenses. You state the county will provide some of the requested information to the requestor. You claim the remaining 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 representative sample of information.<sup>1</sup> We have also considered comments submitted by the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor contends the requested information was previously released to a member of the media. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that same information may

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. We are unable to determine whether or not the submitted information is the exact information that may have been previously released. Regardless, the county claims the information is excepted from disclosure pursuant to section 552.101 of the Government Code, which makes information confidential by law for purposes of section 552.007. *See* Gov't Code § 552.101; *see also* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). Therefore, we will consider the county's arguments for the information at issue.

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 encompasses information made confidential by other statutes, such as article 45.0217 of the Code of Criminal Procedure, which addresses the confidentiality of records and files relating to a child in certain circumstances. We note the Eighty-third Texas Legislature adopted the three following bills amending article 45.0217: Senate Bills 393 and 394 and House Bill 528. *See* Act of May 23, 2013, 83rd Leg., R.S., ch. 1407, § 4, 2013 Tex. Gen. Laws 3733 (Senate Bill 393); Act of May 22, 2013, 83rd Leg., R.S., ch. 1257, § 3, 2013 Tex. Gen. Laws 3181-82 (House Bill 528); Act of May 16, 2013, 83rd Leg., R.S., ch. 1319, § 2, 2013 Tex. Gen. Laws 3501 (Senate Bill 394). As a result, there are currently two versions of article 45.0217 of the Code of Criminal Procedure. As amended by Senate Bills 393 and 394, article 45.0217 provides, in pertinent part:

(a) This article applies only to a misdemeanor offense punishable by fine only, other than a traffic offense.

(a-1) Except as provided by Article 15.27 [of the Code of Criminal Procedure] and Subsection (b), all records and files, including those held by law enforcement, and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for or who has received a dismissal after deferral of disposition for an offense described by Subsection (a) are confidential and may not be disclosed to the public.

Crim. Proc. Code art. 45.0217(a)-(a-1). As amended by House Bill 528, article 45.0217 provides, in pertinent part:

(a) Except as provided by Article 15.27 [of the Code of Criminal Procedure] and Subsection (b), all records and files, including those held by law enforcement, and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is charged with, is convicted of, is found not guilty of, had a charge dismissed for, or is granted deferred disposition for a fine-only misdemeanor offense other than a traffic offense are confidential and may not be disclosed to the public.

*Id.* art. 45.0217(a). In Attorney General Opinion GA-1035, our office addressed the question of how to reconcile the two versions, and found “[a] *court* . . . may simultaneously comply with the amendments of both the Senate Bills and the House Bill. Therefore, . . . the Senate Bills and the House Bill do not irreconcilably conflict.” Attorney General Opinion GA-1035 at 2 (2014) (emphasis added). We note article 45.0217 is contained in subchapter B of chapter 45 of title 1 of the Code of Criminal Procedure. *See* Crim. Proc. Code ch. 45. Chapter 45 is titled “Justice and Municipal Courts” and subchapter B is titled “Procedures for Justice and Municipal Courts.” Upon review, we find article 45.0217 only applies to justice and municipal courts. *See* Attorney General Opinion GA-1035 at 2 (2014). The request for information was received by the county. Thus, article 45.0217 is not applicable to the submitted information, and the county may not withhold the information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses article 44.2811 of the Code of Criminal Procedure, which also addresses the confidentiality of records and files relating to a child in certain circumstances. Like article 45.0217, the Eighty-third Texas Legislature amended article 44.2811 with Senate Bills 393 and 394 and House Bill 528. *See* Act of May 23, 2013, 83rd Leg., R.S., ch. 1407, § 3, 2013 Tex. Gen. Laws 3733 (Senate Bill 393); Act of May 22, 2013, 83rd Leg., R.S., ch. 1257, § 1, 2013 Tex. Gen. Laws 3181 (House Bill 528); Act of May 16, 2013, 83rd Leg., R.S., ch. 1319, § 1, 2013 Tex. Gen. Laws 3501 (Senate Bill 394). As a result, there are currently two versions of article 44.2811 of the Code of Criminal Procedure. As amended by Senate Bills 393 and 394, article 44.2811 provides:

(a) This article applies only to a misdemeanor offense punishable by fine only, other than a traffic offense.

(b) All records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for or who has received a dismissal after deferral of disposition for an offense described by Subsection (a) are confidential and may not be disclosed to the public except as provided under Article 45.0217(b).

Crim. Proc. Code art. 44.2811(a)-(b). As amended by House Bill 528, article 44.2811 provides:

All records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a criminal case for a fine-only misdemeanor, other than a traffic offense, that is committed by a child and that is appealed are confidential and may not be disclosed to the public except as provided under Article 45.0217(b).

*Id.* art. 44.2811. In Attorney General Opinion GA-1035, our office addressed the question of how to reconcile the two versions, and found “complying with the Senate Bills does not result in violating the House Bill, and vice versa. Therefore, . . . the Senate Bills and the House Bill do not irreconcilably conflict.” Attorney General Opinion GA-1035 at 2 (2014). Both versions of article 44.2811 pertain to information relating to a fine-only misdemeanor offense committed by a child. *See* Crim. Proc. Code art. 44.2811. We note the term “child” is not defined for purposes of article 44.2811 of the Code of Criminal Procedure. When a word used in a statute is not defined and that word is “connected with and used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in the particular trade, subject matter, or art.” Gov’t Code § 312.002; *see also Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 485 (Tex. 1998); *Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). Furthermore, article 3.01 of Title 1 of the Code of Criminal Procedure provides “[a]ll words, phrases and terms used in [the Code of Criminal Procedure] are to be taken and understood in their usual acceptance in common language, except where specially defined.” Crim. Proc. Code art. 3.01. We note other statutes dealing with records related to offenses committed by a child define the word “child” as a person who is ten years of age or older and under seventeen years of age at the time the offense is committed. *See* Fam. Code § 51.02(2); *see also* Crim. Proc. Code art. 45.058(h). Accordingly, we similarly conclude, for purposes of article 44.2811 of the Code of Criminal Procedure, a “child” is a person who is ten years of age or older and under seventeen years of age at the time the offense is committed. Upon review, the submitted information reflects it does not involve offenders who were ten years of age or older and under seventeen years of age at the times the offenses were committed. Thus, article 44.2811 is not applicable to the submitted information, and the county may not withhold the information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 58.00711 of the Family Code. Section 58.00711 addresses the confidentiality of records relating to juveniles charged with fine-only misdemeanors. The Eighty-third Texas Legislature also amended section 58.00711 with Senate Bill 394 and House Bill 528. *See* Act of May 22, 2013, 83rd Leg., R.S., ch. 1257, § 4, 2013 Tex. Gen. Laws 3182 (House Bill 528); Act of

May 16, 2013, 83rd Leg., R.S., ch. 1319, § 3, 2013 Tex. Gen. Laws 3502 (Senate Bill 394). As a result, there are currently two versions of section 58.00711 of the Family Code. As amended by Senate Bill 394, section 58.00711 provides:

(a) This section applies only to a misdemeanor offense punishable by fine only, other than a traffic offense.

(b) Except as provided by Article 45.0217(b), Code of Criminal Procedure, all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for or who has received a dismissal after deferral of disposition for an offense described by Subsection (a) are confidential and may not be disclosed to the public.

Fam. Code § 58.00711. As amended by House Bill 528, section 58.00711 provides:

Except as provided by Article 45.0217(b), Code of Criminal Procedure, all records and files and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is charged with, is convicted of, is found not guilty of, had a charge dismissed for, or is granted deferred disposition for a fine-only misdemeanor offense other than a traffic offense are confidential and may not be disclosed to the public.

*Id.* As previously discussed, in Attorney General Opinion GA-1035, our office found “[a] court . . . may simultaneously comply with the amendments of both the Senate Bills and the House Bill. Therefore, . . . the Senate Bills and the House Bill do not irreconcilably conflict.” Attorney General Opinion GA-1035 at 3 (2014) (emphasis added). For purposes of section 58.00711, “child” means a person who is ten years of age or older and under seventeen years of age at the time of the conduct at issue. *See* Fam. Code § 51.02(2). You argue the submitted information is confidential pursuant to section 58.00711 of the Family Code. Upon review, however, the submitted information reflects it does not involve offenders who were ten years of age or older and under seventeen years of age at the times of the conduct at issue. Thus, the submitted information is not confidential pursuant to section 58.00711 and it may not be withheld under section 552.101 of the Government Code on that basis. As you have not claimed any other exceptions to disclosure, the county must release the submitted information.<sup>2</sup>

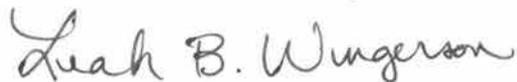
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<sup>2</sup>We note the information includes a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

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](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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/bhf

Ref: ID# 572547

Enc. Submitted documents

c: Requestor  
(w/o enclosures)