



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 9, 2015

Ms. Sherri West  
Custodian of Records  
Port Aransas Police Department  
705 West Avenue A  
Port Aransas, Texas 78373

OR2015-23480

Dear Ms. West:

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# 588617 (PAPD ORR# 15-9284).

The Port Aransas Police Department (the "department") received a request for information regarding a specified incident.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You state the department received the request on September 7, 2015. As of the date of this ruling, the department has not submitted a copy

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<sup>1</sup>Because you did not submit a copy of the request for information, we take our description from the submitted brief.

of the request for information. Consequently, the department failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code for the submitted information, this exception is discretionary in nature and serves only to protect a governmental body's interests, and thus may be waived. As such, section 552.108 does not constitute a compelling reason to withhold information. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the department has waived its claim under section 552.108 for the submitted information. Accordingly, no portion of the submitted responsive information may be withheld under this exception. However, section 552.101 of the Government Code makes information confidential under the Act, and thus, constitutes a compelling reason to withhold information. We will therefore address the applicability of this exception 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. This section encompasses information made confidential by other statutes, such as section 58.007 of the Family Code which provides, in relevant part:

(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). For purposes of section 58.007(c), a “child” is a person who was ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Thus, under section 58.007(c), law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997 are confidential. *See* Act of June 1, 2015, 84th Leg., R.S., ch. 935, § 18, 2015 Tex. Sess. Law Serv. 3224, 3233-34 (to be codified as amendments to Fam. Code § 51.03); Act of May 31, 2015, 84th Leg., R.S., ch. 944, § 4, 2015 Tex. Sess. Law Serv. 3268, 3269-70 (to be codified as an amendment to Fam. Code § 51.03(b)); Act of June 1, 2015, 84th Leg., R.S., ch. 1273, § 3, 2015 Tex. Sess. Law. Serv. 4310, 4311 (to be codified as an amendment to Fam. Code § 51.03(b)) (defining “delinquent conduct” and “conduct indicating a need for supervision”).

Upon review, we find the submitted information consists of law enforcement records relating to juvenile conduct that occurred after September 1, 1997. It does not appear any of the exceptions to confidentiality under section 58.007 of the Family Code apply to this information. Thus, the submitted information is confidential under section 58.007(c) of the Family Code, and the department must withhold it under section 552.101 of the Government 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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 588617

Enc. Submitted documents

c: Requestor  
(w/o enclosures)