



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 11, 2017

Mr. William Schultz
Assistant District Attorney
Civil Division
Denton County
1450 East McKinney Street, Suite 3100
Denton, Texas 76209

OR2017-00803

Dear Mr. Schultz:

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# 641225.

The Denton County Criminal District Attorney's Office (the "district attorney's office") received a request for (1) the complete file pertaining to a specified incident, (2) crime data reports pertaining to a specified city during a specified time period, (3) specified crime briefing reports, (4) calls for service pertaining to specified offenses during a specified time period, (5) certain information pertaining to the specified incident, (6) incarceration records pertaining to a named individual, (7) all complaints filed by two named individuals, and (8) the personnel files of six named police officers. You state you do not have information responsive to portions of the request.¹ You argue some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Initially, we address your argument some of the submitted information is not subject to the provisions of the Act because it consists of records of the judiciary. The Act generally requires the public disclosure of information maintained by a “governmental body.” See Gov’t Code § 552.002(a)(1). While the Act’s definition of a “governmental body” is broad, it specifically excludes the judiciary. See *id.* § 552.003(1)(B). Information “collected, assembled, or maintained by or for the judiciary” is not subject to the Act but instead is “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov’t Code § 552.003(1)(B) prior to enactment of Gov’t Code § 552.0035). In determining whether a governmental entity falls within the judiciary exception of the Act, this office looks to whether governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative functions. See Open Records Decision No. 646 at 2-3 (1996) (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ)). You state the e-mails at issue were written, produced, collected, assembled, or maintained by a judge who is a part of the judiciary. However, the requestor seeks the district attorney’s office’s investigation file pertaining to the specified incident, and the submitted information reveals the e-mails at issue were received by the district attorney’s office in connection with its investigation and prosecution of the specified incident. Thus, the information at issue is maintained by the district attorney’s office in the transaction of official business for the district attorney’s office. See Gov’t Code § 552.002. Because this information is maintained by the district attorney’s office in connection with the transaction of its official business, it does not constitute records of the judiciary. Therefore, the information at issue is subject to the Act and may only be withheld if it is excepted from disclosure under an exception in the Act.

Next, we note you have only submitted information pertaining to the specified incident. To the extent any additional information responsive to this request existed and was maintained by the district attorney’s office on the date the district attorney’s office received the request, we assume the district attorney’s office has released it. If the district attorney’s office has not released any such information, it must do so at this time. *Id.* §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from public 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. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. Fam. Code § 58.007(c). The relevant language of section 58.007 reads 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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j)(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 at the time of the reported conduct. *See id.* § 51.02(2). The submitted information involves juvenile conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). Thus, this information is generally confidential under section 58.007(c). We note the requestor is an attorney representing the parents of the juvenile offender listed in the submitted information and has a right to inspect juvenile law enforcement records concerning her clients' child pursuant to section 58.007(e) of the Family Code. Therefore, the submitted information may not be withheld from her under section 552.101 of the Government Code in conjunction with

section 58.007(c) of the Family Code. *Id.* § 58.007(e). However, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, we will address whether the submitted information is otherwise excepted under the Act.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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.

Id. § 261.201(a). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. You have not indicated the district attorney’s office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the district attorney’s office must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

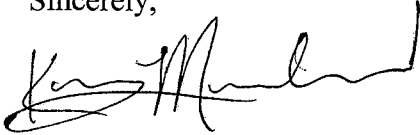
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

[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 black ink, appearing to read 'Kenny Moreland', written in a cursive style.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/sdk

Ref: ID# 641225

Enc. Submitted documents

c: Requestor
(w/o enclosures)