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ATTORNEY GENERAL OF TEXAS

April 29, 2022

Ms. Britney Long
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Bojorquez Law Firm, PC
11675 Jollyville Road, Suite 300
Austin, Texas 78759

OR2022-12269

Dear Ms. Long:

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# 942116 (PIR Nos. R002306-020822, R002320-021522, R002325-021622, and R002386-030922).

The City of Hutto (the "city"), which you represent, received four requests from different requestors for information pertaining to a specified incident. You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information consists of a grand jury subpoena and information obtained through a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury and are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury's constructive possession when the same information also is held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is

not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Thus, to the extent the city holds the grand jury subpoena and the information obtained through the grand jury subpoena solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the city is not required to release that information in response to the instant request.¹ To the extent the city holds the information at issue in its own capacity and not solely as an agent of the grand jury, we will address your arguments against its disclosure.

Section 552.101 of the Government Code exempts 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 section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the 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 Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). The remaining information involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear any of the exceptions in section 58.008 apply. Accordingly, the city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.²

¹ In this instance, as our ruling is dispositive, we need not address your arguments against disclosure of this information.

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, including the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e). Additionally, we note the first requestor has a right of access to the information at issue pursuant to section 261.201(k) of the Family Code. *See* Fam. Code § 261.201(k); *but see id.* § 261.201(l)(2). If you receive another request for this information from a

In summary, to the extent the city holds the grand jury subpoenas and the information obtained through grand jury subpoenas solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the city is not required to release that information in response to the instant request. The city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.008(b) 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.

These 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Pearlie Gault
Attorney
Open Records Division

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Ref: ID# 942116

c: Requestor