



July 11, 2001

Mr. Robert R. Ray  
Assistant City Attorney  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606-1952

OR2001-3001

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149243.

The Longview Fire Marshal (the "fire marshal") received a written request for records pertaining to the investigation of a fire at a school. You explain that the investigation concerns a suspected case of arson and that two juvenile suspects have been questioned and "magistrated" in connection with the investigation. You contend that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup>

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." Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. The relevant language of section 58.007(c) 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,

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<sup>1</sup>Because we resolve your request under section 552.101 of the Government Code, we need not otherwise address the applicability of section 552.108.

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 Subchapter B.

The division of a city fire department that investigates arson is a "law-enforcement agency." See Open Records Decision No. 127 at 8 (1976). The fire marshal's investigation report that you seek to withhold pertains to an instance of alleged juvenile conduct that occurred after September 1, 1997. Accordingly, we conclude that the information at issue must be withheld in its entirety pursuant to section 58.007(c) of the Family Code in conjunction with section 552.101 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/RWP/seg

Ref: ID# 149243

Enc. Submitted documents

c: Mr. Christian Nussbaumer, FCLS  
CGU Southwest  
5910 North Central Expressway, Suite 500  
Dallas, Texas 75206-5130  
(w/o enclosures)