



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 31, 2002

Mr. Therold I. Farmer
Walsh, Anderson, Brown, Schulze & Aldridge
P.O. Box 2156
Austin, Texas 78768

OR2002-7487

Dear Mr. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174409.

The Granbury Independent School District (the "district"), which you represent, received a written request for a certain witness statement of the Granbury Police Department that was taken in connection with a pending criminal investigation. Among other arguments, you contend that the requested witness statement is excepted from required disclosure pursuant to section 552.108 of the Government Code.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352.

The witness statement at issue was taken in connection with an investigation of alleged delinquent conduct. Section 58.007(c) of the Family Code provides in pertinent 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 Subchapter B.

Fam. Code § 58.007(c). We find that the information at issue is a law enforcement record concerning a child that is subject to section 58.007(c). Because section 58.007 does not authorize release of the record in this instance, we conclude that the requested information must be withheld pursuant to section 552.101 of the government Code. *See* Open Records Decision No. 181 (1977) (construing statutory predecessor).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/RWP/sdk

Ref: ID# 174409

Enc: Submitted documents

c: Ms. Renee Estrada
P.O. Box 1853
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(w/o enclosures)