



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 11, 2003

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2003-4803

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184108.

The Garland Police Department (the "department") received a request for information relating to a named individual, including tickets, arrest reports, and incident reports. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You also ask whether the department may make the requested information available to this particular requestor. We have considered your arguments and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. You contend that the submitted information is confidential under section 58.007 of the Family Code. Section 58.007 provides in 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). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). 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). We note that although report number 2002R032404 reveals the identities of juveniles, neither of those individuals is listed in that report as a juvenile offender. We therefore find that section 58.007(c) is not applicable to report number 2002R032404. *See id.* § 51.04 (title 3 of Family Code covers proceedings in all cases involving delinquent conduct or conduct indicating need for supervision engaged in by person who was child at time of conduct). As you claim no other exception to the disclosure of report number 2002R032404, it must be released. With the exception of report number 2002R032404, we agree that the submitted information is confidential under section 58.007(c) of the Family Code. We therefore conclude that, with the exception of report number 2002R032404, the submitted information is excepted from public disclosure under section 552.101 of the Government Code as information made confidential by law.

You also ask whether the submitted information that is confidential under section 58.007(c) of the Family Code may be made available to this particular requestor. Section 58.007(e) of the Family Code provides that “[l]aw enforcement records and files concerning a child may be inspected by a juvenile justice agency as that term is defined by Section 58.101 [of the Family Code] and a criminal justice agency as that term is defined by Section 411.082, Government Code.” Fam. Code § 58.007(e). Section 58.101 of the Family Code provides that “‘juvenile justice agency’ means an agency that has custody or control over juvenile offenders.” *Id.* § 58.101(5). Section 411.082 of the Government Code defines a “criminal justice agency” as including “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice” and “a nongovernmental railroad or campus police department that has obtained an originating agency identifier from the Federal Bureau of Investigation.” Gov’t Code § 411.082(3).

In this instance, the requestor identifies herself as a probation officer of the Dallas County Juvenile Department. You do not state, however, and we are not otherwise informed whether the Dallas County Juvenile Department is a juvenile justice agency or a criminal justice agency for purposes of section 58.007(e) of the Family Code. Nevertheless, if the department is able to determine that this particular requestor represents a juvenile justice

agency or a criminal justice agency, as provided by section 58.007(e) of the Family Code, then the requestor has a right of access under section 58.007(e) to the submitted information that is confidential under section 58.007(c). Otherwise, the requestor has no right of access to that information. We note that a release of information made confidential by section 58.007(c) under the authority of section 58.007(e) would not constitute a disclosure of confidential information to the public for purposes of section 552.352 of the Government Code or a selective disclosure of information for purposes of section 552.007. *See also* Open Records Decision No. 655 at 8 (1997) (information excepted from public disclosure under Gov't Code chapter 552 may be transferred between agencies without destroying its confidential character if agency to which information is transferred has authority to obtain it); *compare* Attorney General Opinion DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized, and receiving agency is not among statute's enumerated entities).

In summary, report number 2002R032404 is not confidential under section 58.007(c) of the Family Code and thus is not excepted from disclosure under section 552.101 of the Government Code. The department must release report number 2002R032404. The rest of the submitted information is confidential under section 58.007(c) and is therefore excepted from public disclosure under section 552.101 as information made confidential by law. However, this particular requestor has a right of access to the information that is confidential under section 58.007(c) if the department determines that the requestor is authorized to inspect that information under section 58.007(e) of the Family 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

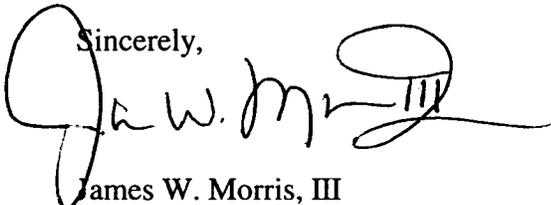
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "J.W. Morris III". The signature is fluid and cursive, with a large initial "J" and a stylized "M" at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 184108

Enc: Submitted documents

c: Ms. Doloras Guilliod
Dallas County Juvenile Department
1111 Belt Line Road, Suite 200
Garland, Texas 75040
(w/o enclosures)