ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2003

Ms. Mary J. Kayser
City Secretary
City of Burleson
141 West Renfro
Burleson, Texas 76028-4261

OR2003-5734

Dear Ms. Kayser:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186078.

The Burleson Police Department (the "department") received a request for information in the department's possession wherein either of two named individuals is a suspect, witness, or complaining witness. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. Section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, 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. Section 51.02(2)(A) of the Family Code defines "child" for purposes of section 58.007, in part, as a "person who is . . . ten years of age or older and under 17 years of age."

After reviewing the submitted information, we find that report number 02-39815 and report number 03-11577 involve allegations of juvenile conduct in violation of penal statutes that occurred after September 1, 1997. Thus, these reports are subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, these reports are confidential in their entirety in accordance with section 58.007(c) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code. We note, however, that reports 03-11184, 03-5475, 02-24268, 01-24250 and 00-12687 do not identify specific juvenile suspects. Because specific juvenile suspects are not identified, we find that these reports are not made confidential under section 58.007 of the Family Code and may not be withheld on that basis. As you claim no other exceptions and the information is not otherwise confidential by law, we conclude that the department must release reports 03-11184, 03-5475, 02-24268, 01-24250 and 00-12687.

To summarize, the department must withhold report number 02-39815 and report number 03-11577 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The remaining information must be released.

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).

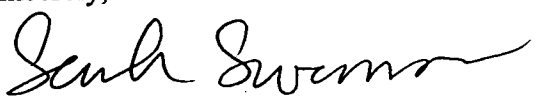
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 186078

Enc. Submitted documents

c: Mr. F. Steven McClure
P. O. Box 1166
Burleson, Texas 76097-1166
(w/o enclosures)