



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 1, 2004

Mr. Steven D. Monté
Assistant City Attorney
Criminal Law & Police Division
City of Dallas
1400 South Lamar Street #300A
Dallas, Texas 75215-1801

OR2004-0557A

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194954.

The City of Dallas (the "city") received a request for a certain offense report. In Open Records Letter No. 2004-0557 (2004), this office concluded that the information submitted in that instance was subject to required public disclosure. It has since come to our attention that the requested information is confidential. We have re-examined our ruling and determined that Open Records Letter No. 2004-0557 (2004) should be withdrawn. This decision is substituted for the previous decision.

You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. We have considered the exception you claim and reviewed the information.

Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. 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, 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.

Family Code § 58.007(c). Section 58.007 covers “law enforcement records” of an individual who is a “child” as defined in section 51.02. *See id.*; Open Records Decision No. 680 at 9 (2003). A “child” means a person who is ten years of age or older and under 17, or 17 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.¹ *See* Family Code § 51.02(2). The status as a “child” is determined by the age of the person on the date of the commission of the alleged offense. *See id.* § 51.04(a).

You state that the offense occurred after September 1, 1997, and that the suspect in the requested report is a juvenile. We have reviewed the report and note that one of the known suspects is a child. It does not appear that any of the exceptions in section 58.007 apply; therefore, the requested information is confidential pursuant to section 58.007(c) of the Family Code. You must withhold the information from disclosure under 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).

¹A person who is 17 years of age and who is on juvenile probation on the date the person commits another offense is, by definition, a “child” under the Juvenile Justice Code. The juvenile court has jurisdiction to modify the prior disposition based on the new conduct. *See* TEX. FAM. CODE ANN. § 51.041 (Vernon 2002).

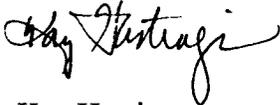
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 194954

c: Mr. Senie James
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