



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2006

Mr. Nathan C. Barrow
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2006-01102

Dear Mr. Barrow:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID#241487.

The City of Fort Worth (the "city") received a request for a specific police report. 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" Gov't Code § 552.101. This section encompasses information protected by other statutes, such as Family Code section 58.007. Section 58.007 makes confidential the law enforcement records of a juvenile who, on or after September 1, 1997, engaged in delinquent conduct or conduct indicating a need for supervision. *See* Fam. Code § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). 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.

Fam. Code § 58.007(c). The city asserts that the submitted police report involves juveniles engaged in delinquent conduct. However, the city does not explain, and the information does not reveal, how the conduct described in the police report is delinquent conduct as defined by section 51.03 of the Family Code. *See* Fam. Code § 51.03(a) (requiring that 'delinquent conduct' involve violation of statute or court order). Additionally, we note that section 58.007 is applicable only to information that relates to a juvenile as a suspect or offender, not as a complainant, victim, witness, or other involved party. *See* Fam. Code § 58.007(c). Both of the juveniles in the report are listed as victims. Because the city has failed to demonstrate the applicability of section 58.007 to the submitted police report, it may not be withheld from disclosure under section 552.101 of the Government Code on that basis. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam Code § 261.201(a). However, you do not explain, and the information does not reveal, how the submitted report pertains to an investigation under chapter 261 of alleged or suspected child abuse or neglect as those terms are defined by the Family Code. *See* Fam. Code. §§ 261.001(1), (4) (defining "abuse" and "neglect" for the purposes of chapter 261 of the Family Code); *see also* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Thus, the department may not withhold the

submitted report under section 261.201. As you raise no other exceptions to disclosure, the submitted report must be released.

You also ask this office to issue a previous determination permitting the city to withhold juvenile law enforcement records without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. Accordingly, 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read 'José Vela III', written in a cursive style.

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 241487

Enc. Submitted documents

c: Juan Tavares
6820 Greenlee St.
Fort Worth, Texas 76112
(w/o enclosures)