



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 10, 2006

Mr. Trenton C. Nichols  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2006-07261

Dear Mr. Nichols:

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# 257302.

The City of McKinney (the "city"), which you represent, received a request for a specified offense report. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See Gov't Code* § 552.301(b). You inform us that the city received the request for information on May 26, 2006. However, the city did not request a decision from this office until June 14, 2006. Thus, you failed to meet the deadline prescribed by section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See Open Records Decision No. 150 at 2* (1977). Section 552.108 of the Government Code, which protects law enforcement interests, is a discretionary exception and generally does not provide a

compelling reason to overcome the presumption of openness. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive predecessor to section 552.108), 522 at 4 (1989) (discretionary exceptions in general). *But see* Open Records Decision Nos. 630 at 3 (1994), 586 at 3 (1991) (need of another governmental body to withhold information under predecessor to section 552.108 can provide compelling reason under section 552.302). In this instance, you have not provided us with a compelling reason under section 552.108. Therefore, you may not withhold the submitted information under section 552.108 of the Government Code. However, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address the city's arguments against disclosure under this exception.

Section 552.101 of the Government Code 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 made confidential by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides 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 submitted information involves juvenile delinquent conduct occurring after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Therefore, the remaining submitted information is confidential pursuant to section 58.007(c) of the Family Code, and the city must withhold it under section 52.101 of the Government Code on that basis.

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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/vh

Ref: ID# 257302

Enc. Submitted documents

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(w/o enclosures)