ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2006

Lt. William Ryan
Pharr Police Department
1900 South Cage
Pharr, Texas 78577

OR2006-09340

Dear Lt. Ryan:

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# 257313.

The Pharr Police Department (the "department") received a request for information pertaining to any incidents occurring at a specified location. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information.

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 protected 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, which provides in pertinent part 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:

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[1] We note that although you also raise section 552.108, you provide no arguments explaining why this section applies to the submitted information. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Consequently, we find that the department has waived its claim under this section. *See* Gov't Code §552.302.

> (1) if maintained on paper or microfilm, kept separate from adult files and records;
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> (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 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age. Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Case number 2004-00048976 involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Thus, we agree that case number 2004-00048976 is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. Although you raise section 58.007 of the Family Code for portions of the remaining submitted information, you have not explained, and the information does not reflect, how it constitutes law enforcement records or files concerning a juvenile suspect or offender. Accordingly, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information we have marked in the remaining submitted documents.

In summary, the department must withhold case number 2004-00048976 pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must also withhold the marked Texas motor vehicle record information pursuant to section 552.130 of the Government Code. The remaining submitted 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, 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,

Lauren E. Kleine

Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/eb

Ref: ID# 257313

Enc. Submitted documents

c: Mr. Raul Guajardo
909-B Nyssa Avenue
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(w/o enclosures)