



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 30, 2007

Ms. Jerry Bruce Cain
Assistant City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR2007-06756

Dear Mr. Cain:

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# 279651.

The Laredo Police Department (the "department") received a request for phone calls and mug shots pertaining to a specified incident. You state that you will release mug shots pertaining to adult suspects involved in the incident, but that the department does not maintain the mug shots of juveniles involved in the incident.¹ You claim that the submitted tape cassette recording 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.

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. Section 552.101 encompasses information made confidential by other statutes, such as section 58.007 of the Family Code. The relevant language of section 58.007 reads as follows:

¹We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. -San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(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). You indicate that the submitted 9-1-1 recording relates to juvenile conduct. However, the submitted recording does not identify a juvenile engaged in delinquent conduct or conduct indicating a need for supervision. Furthermore, the department has failed to submit any additional information that would show that the recording pertains to an investigation of a juvenile. Thus, you have failed to demonstrate that the submitted recording is a juvenile law enforcement record. Accordingly, this recording may not be withheld under section 552.101 in conjunction with section 58.007 of the Family Code.

Section 552.101 encompasses information made confidential by section 771.061 of the Health and Safety Code. Section 771.061 makes confidential “[i]nformation that a service provider of telecommunications service is required to furnish to a governmental entity in providing computerized 9-1-1 service” and “[i]nformation that is contained in an address database maintained by a governmental entity or a third party used in providing computerized 9-1-1 service.” Health & Safety Code §771.061(a). However, we note that all of the information provided in the recording was provided by the 9-1-1 caller, and not a third-party telecommunications service provider. Thus, we find that you have failed to establish that section 771.061 of the Health and Safety Code is applicable to the submitted 9-1-1 recording.

Next, you assert that the submitted recording is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that “the enclosed files do not reflect any disposition of the case involving the juvenile defendant.” Based on your statements, we find that you have

failed to establish that the investigation at issue concluded in a final result other than conviction or deferred adjudication. Therefore, we find that you have failed to demonstrate the applicability of section 552.108(a)(2) to the submitted recording. As you raise no further exceptions against the disclosure of the submitted 9-1-1 recording, it must be released to the requestor.

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 that reads "Justin D. Gordon". The signature is written in a cursive style with a large, looping initial "J".

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 279651

Enc. Submitted documents

c: Ms. Erika Jones
Story Coordinator - Inside Edition
555 West 57th Street, Suite 1300
New York, New York 10019
(w/o enclosures)