



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 2, 2009

Ms. Jenny Gravley
Taylor Olson Adkins Sralla Elam, L.L.P
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2009-02688

Dear Ms. Gravley:

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# 340140.

The City of Joshua (the "city"), which you represent, received a request for a specified incident report.¹ You claim that the submitted 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.

We first note that the department did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301(b) provides that a governmental body must ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. Gov't Code § 552.301(b). Further, within fifteen business days of receiving the request, the governmental body must submit to this office a copy of the request for information. Gov't Code § 552.301(e)(1)(B). You inform us that the department received the instant request for information on January 21, 2009; accordingly, the department's deadline under section 552.301(b) was February 4, 2009. However, you did not request a ruling from this office until February 5, 2009. Furthermore, you have not submitted to this office a copy of the

¹As you have not submitted a copy of the written request for information, we take our description from your brief.

written request for information. Consequently, we find that the city failed to comply with the requirements of section 552.301.

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 requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider whether this section requires you to withhold 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 section 58.007 of the Family Code. The relevant language of section 58.007 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:

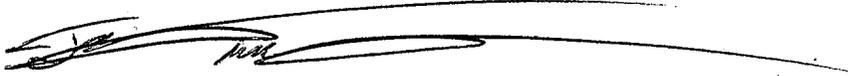
- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning 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, D, and E.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The submitted documents contain information that involves juvenile conduct occurring after September 1, 1997; therefore, the submitted information is subject to section 58.007. It does not appear that any of the exceptions to disclosure in section 58.007 apply. Accordingly, the submitted information must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Travis Tidmore
Assistant Attorney General
Open Records Division

TT/sdk

Ref: ID# 340140

Enc. Submitted documents

cc: Requestor
(w/o enclosures)