



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 10, 2009

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Division
1400 South Lamar Street
Dallas, Texas 75215

OR2009-03116

Dear Ms. McClellan:

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# 336792.

The Dallas Police Department (the "department") received a request for a specified police report pertaining to the requestor's daughter. You claim that the submitted reports are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the requestor only seeks one specified police report. Accordingly, we find that the second submitted police report is not responsive to this information request. This ruling does not address the public availability of nonresponsive information, and the department is not required to release nonresponsive information in response to this request.

With regards to the responsive report, you acknowledge that the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. See Gov't Code § 552.301(b), (e). A governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Gov't Code § 552.302. 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). Because section 552.101 can provide a compelling reason to withhold information, we will consider your arguments against disclosure of this information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that is made confidential by statute. Gov't Code § 552.101. Section 552.101 encompasses section 58.007 of the Family Code, which provides that juvenile law enforcement records relating to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential. Section 58.007(c) provides as follows:

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). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we agree that the submitted report pertains to juvenile delinquent conduct that occurred after September 1, 1997. This report is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JMY/eeg

Ref: ID# 336792

Enc. Submitted documents

c: Requestor
(w/o enclosures)