



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 1, 2009

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 7823-3966

OR2009-12354

Dear Mr. Weir:

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# 354014 (ORR# 2009-3556).

The San Antonio Police Department (the "department"), received a request for information relating to a specified incident. You claim 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.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(a), (b). Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, the department received the request for information on June 1, 2009, but did not request a ruling or submit the requested information for our review until June 25, 2009. Consequently, we find that the department failed to comply with the procedural 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) (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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision No. 150 (1977). Because section 552.101 can present a compelling reason that overcomes the presumption of openness, we will consider your argument under this exception.

Section 552.101 encompasses information protected by other statutes, including section 58.007 of the Family Code. The relevant language of section 58.007 provides:

(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. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55 (a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). For purposes of section 58.007(c), "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* Fam. Code § 51.02(2).

Upon review, we find the submitted incident report number 03-375646 involves allegations of juvenile conduct that occurred on or after September 1, 1997. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). As such, this information constitutes a law enforcement record that is confidential pursuant to

section 58.007(c). Accordingly, the department must withhold incident report number 03-375646 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.¹

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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 354014

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we do not address your other argument against disclosure.