



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2011

Ms. Jaime French
Fulbright & Jaworski, LLP
300 Convent Street, Suite 2100
San Antonio, Texas 78205-3792

OR2011-04903

Dear Ms. French:

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# 414158 (Schertz # 2011-00738).

The Schertz Police Department (the "department"), which you represent, received a request for information related to a specified incident. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). In this instance, the department received the request for information on January 11, 2011. Accordingly, the ten-business-day deadline fell on January 26, 2011. Your request for a decision, however, reflects that it was mailed on February 2, 2011. *See id.* § 552.308(a) (ten business day deadline met if request bears receipt mark of contract carrier indicating time within ten day period). You state, and submit documentation showing, the department requested clarification of a portion of the request on January 24, 2011, and had not received a response from the requestor as of the date of your request for a decision. *See id.* § 522.222(b) (stating if information requested is unclear or if large amount has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). When

a governmental body, in good faith, requests clarification of an unclear request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified. *See City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010). Therefore, the department's ten-business-day deadline has been tolled as to the portion of the request for which it is awaiting clarification. As to the remainder of the request, however, we find the department has failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See Gov't Code* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code, this is a discretionary exception that protects only a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. Thus, no portion of the submitted information may be withheld under section 552.108 of the Government Code. However, you also raise sections 552.101 and 552.130. Because these sections can provide compelling reasons to withhold information, we will consider your remaining arguments for withholding the submitted information.

We next note the department has no obligation at this time to release any information that might be responsive to the portion of the request for which it requested clarification. But if the department receives clarification and wishes to withhold any of the information encompassed by the clarified request, then you must request another decision from this office. *See Gov't Code* §§ 552.301, .302; *see also City of Dallas*, 304 S.W.3d at 387 (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-business-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Section 552.101 of the Government Code excepts from public 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, which protects juvenile law

enforcement records related to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997. Section 58.007 provides, in relevant part:

(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 Subchapters B, D, and E.

Fam. Code § 58.007(c). 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 commission of the offense. *See id.* § 51.02(2). The submitted information concerns, among other things, a 15-year-old and a 16-year-old accused of possession of drug paraphernalia. Accordingly, we find the submitted information involves a juvenile engaged in conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “conduct indicating a need for supervision” for purposes of section 58.007). It does not appear that any of the exceptions in section 58.007 apply. *See id.* § 58.007(e)-(i). Therefore, the submitted information is confidential and must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Because our ruling is dispositive, we do 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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Misty Haberer Barham". The signature is written in a cursive, flowing style.

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID # 414158

Enc. Submitted documents

c: Requestor
(w/o enclosures)