



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2012

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2012-13183

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# 462917 (COSA File No. W007922).

The San Antonio Police Department (the "department") received a request for two specified offense reports. You claim the submitted information is excepted from disclosure pursuant to 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 a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). You state the department received the request for information on May 30, 2012. Accordingly, you were required to raise the exceptions to disclosure that apply to the requested information by June 13, 2012. *See id.* § 552.301(b). However, you did not request a ruling from this office until June 14, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Accordingly, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of section 552.101 to 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 protected by other statutes, including section 58.007 of the Family Code. Section 58.007 provides, in pertinent part, 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 Subchapters B, D, and E.

Fam. Code § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision, that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code. *See id.* § 51.03 (defining “delinquent conduct” and “conduct in need of supervision” for purposes of title 3 of the Family Code). 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 id.* § 51.02(2). Upon review, we find offense report we have marked involves juvenile conduct indicating a need for supervision occurring after September 1, 1997. You do not indicate, nor does it appear, any of the exceptions in section 58.007 of the Family Code apply to this information. Thus, the offense report we have marked is subject to

section 58.007(c) and must be withheld under section 552.101 of the Government Code. We note the arrestee in the remaining report you seek to withhold was seventeen at the time of the incident. Thus, we find the remaining report does not identify a juvenile offender for purposes of section 58.007. Accordingly, the remaining report is not confidential under section 58.007(c) and the department may not withhold it on that basis. As you raise no further exceptions to disclosure, the department must release the remaining report.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 462917

Enc. Submitted documents

c: Requestor
(w/o enclosures)