



November 28, 2000

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston-Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-4538

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141672.

The City of Houston (the "city") received a request for all records regarding a specific arson incident. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. We have considered the exception you claim and reviewed the submitted representative sample of the information at issue.¹

As a preliminary matter, we take note of your statement that a large portion of the responsive records were the subject of a previous letter-ruling issued by this office. *See* Open Records Letter No. 2000-1118 (2000). In that letter-ruling, it was determined that those records were confidential under section 58.007 of the Family Code. Consequently, the city may rely on that previous ruling in regard to the responsive documents that were the subject of that ruling. *See id*; *see also* Gov't Code § 552.301(a).

We now turn to the remaining responsive information. Section 552.101 excepts from required public disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Generally, section 58.007 makes juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 confidential. The relevant language of section 58.007(c) reads as follows:

¹We assume that the "representative sample" of records submitted to this office is truly representative of all of the information at issue. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

(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.

Section 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age.

The information at issue involves juvenile conduct that occurred after September 1, 1997. Although some of the information pertains to suspects who were not juveniles at the time of the offense, we agree that such information is too entwined to be separated from the information regarding juvenile misconduct. It does not appear that any of the exceptions in section 58.007 apply; therefore, all of the requested information is confidential pursuant to section 58.007(c) of the Family Code. Therefore, the city must withhold the information from disclosure under section 552.101 of the Government Code.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

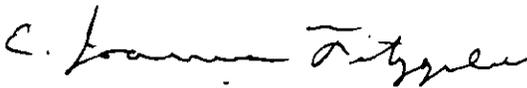
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\er

Ref: ID# 141672

Encl: Submitted documents

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(w/o enclosures)