



May 7, 2001

Lieutenant Javier Gonzales
Records Division
Pharr Police Department
202 East Clark
Pharr, Texas 78577

OR2001-1850

Dear Mr. Gonzales:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146837.

The City of Pharr Police Department (the "department") received multiple requests for complete case files, including case numbers 00-007864, 00-007954, 00-007955, and 00-007956. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code and section 51.14(d) of the Family Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the request letter indicates that forty-seven requests for information were submitted to the department by the same requestor. Our records indicate, however, that you have requested a decision from this office only with respect to information responsive to four of the forty-seven requests. As you did not submit information responsive to the remaining forty-three requests for our review, nor indicate that you seek to withhold it, we assume that you have released this information to the requestor. If you have not released the information responsive to the remaining forty-three requests, you must release it to the requestor at this time.¹ See Gov't Code §§ 552.301(a), .302.

Next, we note that the department failed to comply with section 552.301(b) of the Government Code in asking for this decision. Pursuant to section 552.301(b), a governmental body must ask for a decision and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. The department

¹Because you have not submitted the information, we have no basis for finding it confidential. See Gov't Code § 552.352. Thus, we have no choice but to order the information released per section 552.302 of the Government Code. If you believe that the information is confidential and may not lawfully be released, you must challenge this decision in court as outlined below.

received the requests for information at issue here on February 7, 2001. Because the department's requests for decisions were not postmarked until February 28, 2001, the department failed to request a decision within the ten-business-day period as required by section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with 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* Gov't Code § 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). Section 552.101 provides a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007.² The relevant language of section 58.007(c) reads 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

²You raise section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). Because the law enforcement records at issue pertain to juvenile conduct that occurred on or after September 1, 1997, former section 51.14(d) is inapplicable.

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the submitted information is confidential pursuant to section 58.007(c) of the Family Code. You must therefore withhold the submitted 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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID#146837

Encl: Submitted documents

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(w/o enclosures)