



May 30, 2001

Ms. Vivian Torres
Torres, Tschirhart & Gamble
1313 Lorenzo # 1
Castroville, Texas 78009

OR2001-2232

Dear Ms. Torres:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147774.

The Police Department of the City of Castroville (the "city"), which your firm represents, received a request for information pertaining to a July 20, 2000 incident in which the requestor was arrested. The request specifically seeks the police report of the incident, witness statements obtained in connection with the incident, copies of audio and video recordings of the incident, and a copy of an audio recording of an interview of the requestor. You indicate that the city is willing to release the audio recording of the interview of the requestor, and that no other responsive audio or video recordings exist. You have submitted as Exhibit B the information responsive to the request for the police report and witness statements. You assert that this information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the request itself alleges that the information at issue was previously requested by the requestor. We are not informed whether this prior request was made in writing, and if so, when it was received by the city. If the prior request was made verbally, the Public Information Act is not implicated by such a request. If, however, the city received a prior written request for the information at issue, we note that in order to withhold responsive information, the city was required to request a decision from this office no later than the tenth business day after the date such prior request was received by the city. Gov't Code § 552.301(a), (b). Absent a timely request for a decision from this office,

section 552.302 of the Government Code provides that the information responsive to a request "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." A compelling reason sufficient to overcome the section 552.302 presumption of openness exists where the information is made confidential by law. *See, e.g.*, Open Records Decision No. 150 (1977).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ This section encompasses information protected by other statutes. Section 58.007 of the Family Code states in relevant 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 Subchapter B.

The above provision makes confidential juvenile law enforcement records pertaining to conduct that occurred on or after September 1, 1997. The information you have provided indicates one of the suspects to be a juvenile. The information thus comprises law enforcement records that involve juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, we conclude that the information is confidential pursuant to section 58.007(c) of the Family Code. Accordingly, the city must withhold the information in its entirety pursuant to section 552.101 of the Government Code. Because we resolve this matter under section 552.101, we do not address the section 552.108 assertion.

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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).

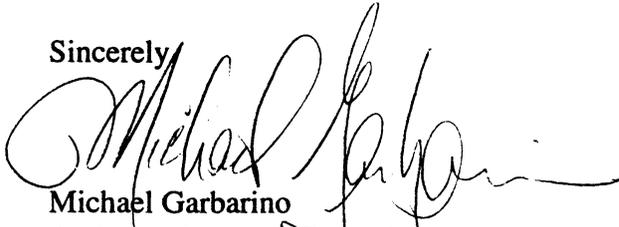
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 147774

Encl. Submitted documents

cc: Mr. Gary W. Lochte
1398 F.M. 1343
Castroville, Texas 78009
(w/o enclosures)