



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2005

Ms. Lois Cochran
Records Coordinator
City of Cleburne
P. O. Box 677
Cleburne, Texas 76033-0677

OR2005-00772

Dear Ms. Cochran:

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# 220210.

The City of Cleburne (the "city") received a request for a copy of Police Report Nos. 246909 and 245887. You state that some responsive information has been released to the requestor but claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, we must address the city's obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). You inform us that the city received the request for information on December 17, 2004. However, you did not request a decision from this office

until January 4, 2005. *See* Gov't Code § 308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). You do not inform us that the city was closed for any of the business days between December 17, 2004 and January 4, 2005. We therefore find that the city failed to comply with the procedural requirements of section 552.301 in requesting a ruling from this office.

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 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 section 552.302); Open Records Decision No. 319 (1982).

Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). The city's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302, and none of the submitted information may be withheld on this basis. *See* Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 586 at 2-3 (1991). However, section 552.101 can provide a compelling reason to withhold information, and we will consider your arguments regarding this exception.

This office has held that a compelling reason exists to withhold information when third party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information that another statute makes confidential. You contend that Police Report No. 245887 is confidential under section 58.007 of the Family Code. This provision governs law enforcement records relating to juvenile offenders and provides:

(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.

Fam. Code § 58.007(c). Police Report No. 245887 pertains to a case involving allegations of juvenile conduct that occurred after September 1, 1997. *See* Fam. Code § 51.02(2) (providing that in title 3 of Family Code, “child” means person who is ten years of age or older and under seventeen years of age). Thus, this information is subject to section 58.007, and it does not appear that any of the exceptions in section 58.007 apply. Therefore, Police Report No. 245887 is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety pursuant to section 552.101 of the Government Code.

In addition, we note that Police Report No. 246909 contains social security numbers. A social security number or “related record” may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990. However, because the laws regarding the confidentiality of social security numbers are intended to protect individuals’ privacy, the requestor’s social security number may not be withheld from her on the basis of the federal law. *See* Gov’t Code § 552.023(b).

We also note that this report contains a Texas driver’s license number. Section 552.130 of the Government Code, which can provide a compelling reason for non-disclosure under section 552.302, provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1)-(2). Accordingly, the city must withhold the Texas driver's license number contained in Police Report No. 246909 pursuant to section 552.130 of the Government Code.

Lastly, Police Report No. 246909 contains an individual's e-mail address. Section 552.137 of the Government Code, which can also provide a compelling reason for non-disclosure under section 552.302, excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). However, because it is unclear whether this e-mail address belongs to the requestor, we are unable to determine whether the requestor has a special right of access to it under section 552.023. Therefore, in accordance with section 552.137, the city must withhold the e-mail address unless it belongs to the requestor or the city receives consent to release it.

To summarize: (1) the city must withhold Police Report No. 245887 in its entirety pursuant to section 58.007(c) of the Family Code in conjunction with section 552.101 of the Government Code; (2) the social security numbers contained in Police Report No. 246909 may be confidential pursuant to federal law and, with the exception of the requestor's own social security number, may be excepted from disclosure under section 552.101 of the Government Code; (3) the city must withhold the Texas driver's license number contained in Police Report No. 246909 pursuant to section 552.130 of the Government Code; (4) under section 552.137 of the Government Code, the city must withhold the e-mail address contained in Police Report No. 246909 unless it belongs to the requestor or the city receives consent to release it; and (5) the city must release the remainder of Police Report No. 246909.¹

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

¹Because some of the information is confidential with respect to the general public, if the city receives a future request for this information from a person other than the requestor or her authorized representative, the city should again seek our decision.

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 220210

Enc. Submitted documents

c: Ms. Nancy Edwards-Denton
P. O. Box 54
Cleburne, Texas 76033
(w/o enclosures)