



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 29, 2005

Ms. Meredith Ladd  
Brown & Hoffmeister  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2005-06847

Dear Ms. Ladd:

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# 229157.

The McKinney Police Department (the "department") received a request for any records pertaining to a named individual. You state that the department is willing to provide this information through an interagency transfer, but state that the requested information may be excepted from disclosure under 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 procedural obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body that receives a written request for information that it wishes to withhold from disclosure pursuant to an exception under the Act must ask for an attorney general decision no later than ten business days after the date of receiving the written request. *See* Gov't Code § 552.301(a), (b). Under section 552.301(e), the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. We note that the department failed to comply with the ten and fifteen business day deadlines in this case.

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). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). As section 552.101 of the Government Code can provide a compelling reason to overcome the presumption, we will address your claim under this section.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information made confidential by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. 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
- (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). Some of the information at issue involves juvenile conduct that occurred after September 1, 1997. Therefore, the information we have marked is confidential pursuant to section 58.007(c) of the Family Code, unless one of the exceptions to disclosure in section 58.007 apply.

Section 58.007(e) of the Family Code provides that “[l]aw enforcement records and files concerning a child may be inspected by a juvenile justice agency as that term is defined by Section 58.101 [of the Family Code] and a criminal justice agency as that term is defined by Section 411.082, Government Code.” Fam. Code § 58.007(e). Section 58.101 of the Family

Code provides that “‘juvenile justice agency’ means an agency that has custody or control over juvenile offenders.” *Id.* § 58.101(5). Section 411.082 of the Government Code defines a “criminal justice agency” as including “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice” and “a nongovernmental railroad or campus police department that has obtained an originating agency identifier from the Federal Bureau of Investigation.” Gov’t Code § 411.082(3).

The requestor is an investigator with the Allen Police Department. You do not state, however, and we are not otherwise informed, whether the Allen Police Department is a juvenile justice agency or a criminal justice agency for purposes of section 58.007(e) of the Family Code. Nevertheless, if the department is able to determine that this particular requestor represents a juvenile justice agency or a criminal justice agency, as provided by section 58.007(e) of the Family Code, then the requestor has a right of access under section 58.007(e) to the submitted information that is confidential under section 58.007(c). Otherwise, as it does not appear that any of the other exceptions in section 58.007 apply, the information is confidential under section 58.007 and excepted from disclosure under section 552.101 of the Government Code.

You state that the remaining submitted information may be confidential under the predecessor statute to section 58.007. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided as follows:

Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [pertaining to juvenile conduct] are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Despite the repeal of section 51.14(d), law-enforcement records pertaining to juvenile conduct that occurred prior to the effective date of the repeal continue to be confidential under that section.<sup>1</sup> Because the records at issue pertain to juvenile conduct that occurred prior to January 1, 1996, we conclude that the release of these records is governed by section 51.14(d) of the Family Code.

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<sup>1</sup>See Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Gen. Laws 2591 (Vernon).

Section 51.14(d)(3) specifically authorizes the release of juvenile records to “law-enforcement officers when necessary for the discharge of their official duties.” Accordingly, if the department determines that the requestor in fact is a “law-enforcement officer” who is seeking the information because it is “necessary for the discharge of [his] official duty,” then the requestor has a right of access under section 51.14(d)(3) to the remaining submitted information. Otherwise, the requestor has no right of access to this information, and it is confidential under section 51.14 and must be withheld under section 552.101 of the Government Code.

Finally, we note your assertion that the department is willing to provide the information at issue to the requestor through an interagency transfer. The interagency transfer doctrine provides that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinion. Nos. GA-0055 (2003); Open Records Decision Nos. 680 at 7 (2003), 667 at 3-4 (2000). But an interagency transfer of confidential information is prohibited where a confidentiality statute enumerates specific entities to which release of confidential information is authorized, and the requesting agency is not among the statute’s enumerated entities. *See* Attorney General Opinion DM-353 at 4 n.6 (1995); Open Records Decision No. 661 at 3 (1999). Thus, in this instance, the department may release the submitted information to the requestor only if the requestor is authorized to receive it pursuant to sections 58.007(e) or 51.14(d)(3) of the Family Code. If the requestor does not have a right of access to the information pursuant to these provisions, then the department may not release, pursuant to the interagency transfer doctrine, the information that is confidential under sections 51.14 and 58.007 of the Family Code. *See* ORD 680 at 7 (interagency transfer doctrine cannot operate to allow police department to transfer information confidential under section 58.007 to governmental body that is not among statute’s enumerated entities authorized to receive such information).

In summary, some of the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, this particular requestor may have a right of access to this information under section 58.007(e) of the Family Code. The remaining submitted information is confidential under section 552.101 in conjunction with section 51.14(d), but the requestor may have a right of access to this information under section 51.14(d) of the Family 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).

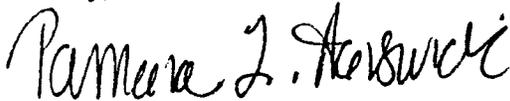
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 229157

Enc. Submitted documents

c: Mr. Darin Smith  
c/o Meredith Ladd  
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(w/o enclosures)