



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2005

Mr. Steven D. Monté
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2005-08957

Dear Mr. Monté:

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# 233396.

The Dallas Police Department (the "department") received a request for information relating to an internal affairs investigation of a particular incident. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, you indicate that the department intends to withhold certain records involving a known offender involved in delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 pursuant to the previous determination of this

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *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 that submitted to this office.

office in Open Records Letter No. 2004-0619 (2004). In that decision, we determined that information involving a known offender who is a child as defined by section 51.02 of the Family Code and relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 is confidential pursuant to section 58.007(c) of the Family Code and must be withheld from disclosure under section 552.101 of the Government Code. *See* Fam. Code §§ 51.02(2) (defining child), 51.03(a), (b) (defining delinquent conduct or conduct indicating a need for supervision), 58.007(c); *see also* Open Records Decision No. 673 at 7 (2001). We therefore agree the department must withhold the information we have marked, including the submitted video, relating to a juvenile offender involved in delinquent conduct or conduct indicating a need for supervision pursuant to the previous determination in Open Records Letter No. 2004-0619.

Next, we must address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Additionally, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records 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. You state that the department received the present request on July 1, 2005. The department did not request a decision from this office until July 29, 2005. Consequently, the department failed to request a decision within the time periods mandated by section 552.301(b) and section 552.301(e) of the Government Code. Based on the foregoing, we conclude that you failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the provisions of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). However, because section 552.101 provides a compelling reason to overcome the presumption of openness, we will address your argument under this exception for the remaining submitted information.

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. You seek to withhold under

section 58.007 an internal affairs investigation concerning officers' alleged excessive use of force against juveniles. Section 58.007(c) provides in pertinent 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.

Fam. Code § 58.007(c). The internal affairs investigation documents, however, are not juvenile law enforcement records. Thus, the remaining submitted information may not be withheld under section 552.101 in conjunction with section 58.007(c).

We note, however, that the internal affairs investigation documents contain information that is protected from disclosure under section 552.101 in conjunction with common-law privacy.² Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find that the names and other identifying information of juvenile offenders in the submitted internal affairs investigation documents are protected under common-law privacy. We therefore determine that the department must withhold the juveniles' identifying information we have marked pursuant to section 552.101 of the Government Code. See Open Records Decision No. 394 (1983); cf. Fam. Code § 58.007.

² Section 552.101 also encompasses the doctrine of common-law privacy.

In summary, the department must withhold the information we have marked, including the submitted video, relating to a juvenile offender involved in delinquent conduct or conduct indicating a need for supervision pursuant to the previous determination in Open Records Letter No. 2004-0619. The department must withhold the juveniles' identifying information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The remainder of the information must be released to the requestor.

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); *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 Office of the Attorney General 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,



James Forrest
Assistant Attorney General
Open Records Division

JF/seg

Ref: ID# 233396

Enc. Submitted documents

c: Ms. Noemi Collie
Noemi Collie, P.C.
1012 North Bishop
Dallas, Texas 75208
(w/o enclosures)