



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2005

Lt. Oscar J. Garcia
McAllen Police Department
P.O. Box 220
1601 N. Bicentennial Boulevard
McAllen, Texas 78501

OR2005-09661

Dear Lt. Garcia:

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# 238051.

The McAllen Police Department (the "department") received a request for the records from incidents # 05-69678, 05-69911, 05-70203, 05-89212, and 05-93505. 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 information.

Initially we note that you did not submit information responsive to the request for case #05-93505. To the extent it existed at the time the request was made, we must assume the department has released case # 05-93505 to the requestor. If the department has not, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible under the circumstances).

Regarding the remainder of the request, section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional,

statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 58.007(c) of the Family Code applies to juvenile conduct that occurred after September 1, 1997 and provides in relevant part:

(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). Section 51.02(2)(A) defines “child” as a person who is ten years of age or older and under seventeen years of age. Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Most of the submitted incident summaries pertain to calls regarding a juvenile runaway, conduct which is within the scope of section 58.007. *See* Fam. Code § 51.03(a)(3) (defining “conduct indicating a need for supervision” to include “the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without the intent to return”). Accordingly, the department must withhold incidents # 05-69678, 05-69911 and 05-89212 from disclosure under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, incident # 05-70203 does not involve a juvenile suspect involved in delinquent conduct. Therefore, it does not constitute a law enforcement record of a juvenile offender. Accordingly, incident # 05-70203 is not confidential under section 58.007 and must be released to this requestor.¹

¹We note that some of this information is confidential and not subject to release to the general public. However, the requestor in this instance has a special right of access to the information. Gov’t Code § 552.023 (person or person’s authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests). Because such information may be confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor or her authorized

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

representative, the department should again seek our decision.

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt McLain", with a long horizontal flourish extending to the right.

Matthew T. McLain
Assistant Attorney General
Open Records Division

MT/jh

Ref: ID# 238051

Enc. Submitted documents

c: Petrita L. Delise
4717 North 11th St., Apt. #30
McAllen, TX 78504
(w/o enclosures)