



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 18, 2007

Ms. Sylvia McClellan  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2007-07697

Dear Ms. McClellan:

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# 286761.

The Dallas Police Department (the "department") received a request for a specified offense report. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, that you failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. 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). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The need of a governmental body, other than the agency that is seeking an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure.

Open Records Decision No. 586 (1991). Because you inform us that the Dallas County District Attorney's Office objects to the release of the requested information, we will consider your claim regarding section 552.108. Section 552.101 can provide a compelling reason to overcome this presumption; therefore, we will address your arguments under this exception.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected 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. Section 58.007(c) provides as follows:

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 submitted documents contain information that involves juvenile conduct occurring after September 1, 1997. None of the exceptions in section 58.007 appears to apply. Therefore, the submitted information is confidential pursuant to section 58.007(c) of the Family Code and the department must withhold it under section 552.101 of the Government Code.<sup>1</sup>

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

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<sup>1</sup>Because we are able to resolve this under section 58.007, we do not address your other argument for exception regarding this information.

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. 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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jb

Ref: ID# 286761

Enc. Submitted documents

c: Ms. Linda Pickles  
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P.O. Box 276  
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(w/o enclosures)