



**ATTORNEY GENERAL OF TEXAS**  
GREG ABBOTT

August 7, 2007

Mr. Rashaad V. Gambrell  
Assistant City Attorney  
City of Houston - Legal Department  
P. O. Box 1562  
Houston, Texas 77251-1562

OR2007-09032A

Dear Mr. Gambrell:

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# 284453.

You have submitted correspondence that we interpret as a request to reconsider Open Records Letter No. 2007-09032 (2007). We note that a governmental body is prohibited from asking this office to reconsider a decision issued under section 552.306 of the Government Code. *See* Gov't Code § 552.301(f). Furthermore, you have not demonstrated that this office made any error in issuing the prior ruling. Nevertheless, we have determined that the prior ruling should be corrected for purposes of due process. *See id.* §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2007-09032 (2007) and serves as the correct ruling.

The Houston Police Department (the "department") received a request for information relating to a specified offense report. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.147 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we address the department's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) provides in part that the governmental body must submit to this office, within fifteen business days of the date of its receipt of the written request for information, a copy of the specific information requested or representative samples if the

information is voluminous. *See* Gov't Code § 552.301(e)(1)(D). If a governmental body fails to comply with section 552.301, the requested information is presumed to be public and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ).

You state that the department received the instant request for information on April 30, 2007. You submitted the information at issue to this office on July 26, 2007. Thus, the department failed to comply with section 552.301, and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when 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). Because the applicability of sections 552.101 and 552.147 of the Government Code can provide compelling reasons for non-disclosure, we will address your claims under those exceptions.

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 exception encompasses information that other statutes make confidential. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). The submitted information relates to juvenile conduct that occurred before January 1, 1996. Therefore, the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family 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 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).

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Jordan Johnson  
Assistant Attorney General  
Open Records Division

JJ/jb

Ref: ID# 284453

Enc. Submitted documents

c: Ms. Mary Samaan  
1001 Texas Avenue, Suite 500  
Houston, Texas 77002  
(w/o enclosures)