



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 10, 2008

Mr. John Ohnemiller
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2008-03208

Dear Mr. Ohnemiller:

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# 308007.

The Midland Police Department (the "department") received a request for a specified police report. You claim that the submitted 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.

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 section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. You assert that the submitted information is subject to this section. We note, however, that section 58.007 is inapplicable because the conduct at issue occurred in 1994. Former section 51.14 of the Family Code is the applicable provision in this instance. Prior to its repeal by the Seventy-Fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. *See* Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to juvenile conduct occurring before January 1, 1996 are governed by 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. Section 51.14 only applies to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2).

In this instance, the submitted information consists of an incident report involving juvenile conduct that occurred in December of 1994. Therefore, the submitted incident report is confidential under former section 51.14 of the Family Code and must be withheld under section 552.101 of the Government Code. *See id.* § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by a child).

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,

A handwritten signature in cursive script that reads "Bill Longley".

Bill Longley
Assistant Attorney General
Open Records Division

BL/sdk

Ref: ID# 308007

Enc. Submitted documents

c: Mr. Cody Reynolds
3922 Monty Drive
Midland, Texas 79703
(w/o enclosures)