



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2008

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

OR2008-10122

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# 316948.

The Dallas Police Department (the "department") received a request for all information pertaining to a specified traffic accident. You claim that portions of the submitted incident reports and investigation documents are excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted incident reports and investigation documents do not pertain to the traffic accident specified in the request. Thus, this information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, you acknowledge, and we agree, that the department failed to request a ruling or submit the responsive information within the statutory time periods prescribed by sections 552.301(b) and 552.301(e) of the Government Code. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the 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 id.* § 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). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). In this instance, sections 552.101, 552.130, 552.136, and 552.147 of the Government Code can provide compelling reasons to overcome this presumption. Therefore, we will consider whether your claimed exceptions to disclosure require the department to withhold any portion of the submitted incident reports and investigation documents.

You claim that the submitted ST-3 officer's accident report is confidential under chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). 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. Section 552.101 encompasses information made confidential by other statutes, such as section 550.065(b) of the Transportation Code, which states that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* The requestor has provided the department with the date and specific location of the accident pursuant to section 550.065(c)(4); thus, the department must release the ST-3 report under this section.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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 58.007(c) 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. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). The submitted incident report numbers 0408915-P, 0408917-P, 0408918-P, 0408920-P, 0408923-P, 0408925-P, 0408927-P, 0408929-P, and 0420056-P and their related investigation documents, which we have marked, pertain to a juvenile being arrested for multiple counts of injury to a child. Thus, we find that this information involves juvenile delinquent conduct. *See id.* § 51.03(a) (defining "juvenile delinquent conduct" for the purposes of section 58.007). It appears that none of the exceptions in section 58.007 of the Family Code apply. Therefore, we find that the incident reports and investigation documents we have marked are confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.¹ You have failed to demonstrate, however, how any of the remaining submitted information pertains to a juvenile as a suspect or offender. Therefore, none of the remaining information may be withheld under section 552.101 in conjunction with section 58.007.

We note that the remaining information is subject to section 261.201 of the Family Code, which is also encompassed by section 552.101. Section 261.201(a) of the Family Code provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The remaining information, which consists of incident report numbers 0429710-P, 0472637-P, and 0472640-P and their related investigation documents, was used or developed in an investigation of multiple counts of child endangerment. *See id.*

¹ As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure of this information.

§ 261.001(4)(B)(i) (definition of child neglect includes “placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child’s level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child”); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Based on our review, we find that the remaining information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, the department must withhold the remaining information, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).²

In summary, the department must release the marked ST-3 accident report pursuant to section 552.101 of the Government Code in conjunction with section 550.065(c)(4) of the Transportation Code. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with sections 58.007 and 261.201 of the Family Code.

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). If the governmental body does not file suit over 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

² As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure of this information.

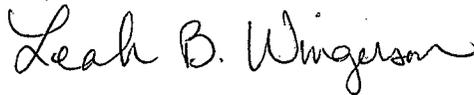
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

~~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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 316948

Enc. Submitted documents

c: Mr. Demarcus Ward
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(w/o enclosures)