



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2008

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2008-10917

Dear Ms. Byles:

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# 318649.

The City of Fort Worth (the "city") received a request for report number 06-0039907, which pertains to a fire at a specified address. We understand you to claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note that a portion of the requested information is subject to a previous ruling issued by this office. On January 22, 2007 this office issued Open Records Letter No. 2007-00645 (2007), in which we ruled that report number 06-0039907 was excepted from public disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.¹ We assume that the pertinent facts and circumstances have not changed since the issuance of that prior ruling. Thus, we determine that the city must continue to rely on our ruling in Open Records Letter No. 2007-00645 as a previous determination and withhold the requested information under section 552.101 in accordance with that decision. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); the governmental body which received the request for the records or information is the same governmental body that previously requested and received a

¹We note that this office issued Open Records Letter Nos. 2007-02563 (2007) and 2007-07544 (2007) on March 7, 2007 and June 14, 2007, respectively. Each of those rulings relied in part on our ruling in Open Records Letter No. 2007-00645 as a previous determination.

ruling from the attorney general; the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). To the extent that the requested information was not addressed in our prior ruling, we will address your claims for exception from disclosure.

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 confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(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, D, and E.

Fam. Code § 58.007(c). The information at issue involves juvenile conduct that occurred after September 1, 1997. *See id.* § 51.02(2) (providing that in title 3 of Family Code, "child" means person who is ten years of age or older and under seventeen years of age); *see also* Open Records Decision No. 127 at 8 (1976) (arson investigation division of fire department considered to be law enforcement unit). It does not appear that any of the exceptions in section 58.007 apply; therefore, the information at issue is confidential pursuant to section 58.007(c) of the Family Code. The city must withhold the information at issue from disclosure under section 552.101 of the Government Code. As our ruling is dispositive, we do not address your remaining argument.

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 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 318649

Enc. Submitted documents

c: Mr. Stuart Brozgold
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(w/o enclosures)