



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 11, 2008

Ms. Meredith Ladd  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2008-10944

Dear Ms. Ladd:

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# 318357.

The Little Elm Police Department (the "department"), which you represent, received a request for information relating to a specified incident. You claim that the requested 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. We have also considered the requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments concerning disclosure of requested information).

Initially, we must address the requestor's assertion that the department did not comply with section 552.301(b) of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. The department states that it received the request for information on May 19, 2008. The requestor asserts that two previous requests for information have been submitted, involving the same information as is requested in the instant request, to which the department has not responded. The determination of whether or not the department received the previous requests for information is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). The department represents that it has checked its records and was unable to locate the

previous requests as referred to by the requestor; therefore, we conclude that the department complied with the procedural requirements of section 552.301(b).

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 section encompasses information made confidential by other statutes. Section 58.007 of the Family Code makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. For purposes of section 58.007, a "child" is defined as a person ten years of age or older and under seventeen years of age. Fam. Code § 51.02(2)(A). 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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). The submitted information involves juveniles engaged in delinquent conduct that occurred after September 1, 1997. However, you explain that the requestor is the attorney for one of the juvenile suspects listed in the submitted report and his parents. Under section 58.007(e), the requestor may inspect and copy law enforcement records concerning the juvenile at issue. *Id.* § 58.007(e). However, the personally identifiable information concerning any other juvenile suspect, offender, victim, or witness must be redacted pursuant to section 58.007(j)(1). *Id.* § 58.007(j)(1). Therefore, pursuant to section 58.007(j), the department must withhold any personally identifiable information, as we have marked, concerning the other juveniles involved. The rest of the submitted information must be released to this requestor pursuant to section 58.007(e).

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,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/mcf

Ref: ID# 318357

Enc. Submitted documents

c: Mr. Andrew V. Howard  
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(w/o enclosures)