



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2008

Mr. Robert E. Hagar
Nichols, Jackson, Dillard, Hagar & Smith L.L.P.
1800 Lincoln Plaza
500 North Arkard
Dallas, Texas 75201

OR2008-15708

Dear Mr. Hagar:

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# 327908.

The City of The Colony (the "city") received a request for police or arrest records pertaining to the requestor and a specified location from May, 2002. 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.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 58.007 of the Family Code, which provides in pertinent part:

(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.

...

(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 requested report involves an allegation of juvenile conduct in violation of a penal statute that occurred after September 1, 1997. We note that, in order for section 58.007(c) to apply, the juvenile offender must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining "child" for purposes of title 3 of Family Code). Therefore, the requested report constitutes a report of criminal juvenile conduct for purposes of section 58.007. However, the requestor is the juvenile suspect listed in the report. The city may not use section 58.007(c) to withhold this report from this requestor. *Id.* § 58.007(e). However, section 58.007(j) states that the city must withhold any information that is excepted from disclosure under other law. *Id.* § 58.007(j)(2).

We note that you have submitted a court order of restricted access that pertains to the report at issue. The order was entered in accordance with section 58.203 of the Family Code, which states the Texas Department of Public Safety shall certify that juvenile law enforcement records are subject to automatic restriction under certain circumstances. *Id.* § 58.203. Section 58.204(b) provides:

(b) On certification of records in a case under Section 58.203, the [Texas Department of Public Safety] may permit access to the information in the juvenile justice information system relating to the case of an individual only:

- (1) by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code; or
- (2) for research purposes, by the Texas Juvenile Probation Commission, the Texas Youth Commission, or the Criminal Justice Policy Council.

Id. § 58.204(b). Furthermore, section 58.207 of the Family Code provides in relevant part:

(a) On certification of records in a case under Section 58.203, the juvenile court shall order:

(1) that the following records to the case may be accessed only as provided by Section 58.204(b):

...

(E) records maintained by a law enforcement agency[.]

...

(b) On receipt of an order under Subsection (a)(1), the agency maintaining the records:

(1) may allow access only as provided by Section 58.204(b); and

(2) shall respond to a request for information about the records by stating that the records do not exist.

Id. § 58.207(a)(1)(E), (b). The requestor in this instance is not one of the entities listed in section 58.204(b) to which access is allowed. Therefore, in accordance with the submitted order of restricted access and section 58.207(b), we find that the city must respond to this request for information by stating that the records do not exist.

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).

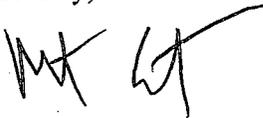
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/jb

Ref: ID# 327908

Enc. Submitted documents

cc: Requestor
(w/o enclosures)