



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2009

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2009-08802

Dear Mr. Weir:

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# 346961 (COSA File No. 07-0386).

The City of San Antonio (the "city") received 23 requests from the same requestor for information relating to 23 named city police officers. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the information you submitted.

You inform us that the requestor has agreed to the redaction of motor vehicle record information, including driver's license, vehicle identification and license plate numbers, from the submitted records. Thus, any motor vehicle record information contained in the submitted records is not responsive to the instant requests. This decision does not address the public availability of any submitted information that is not responsive to these requests, and such information need not be released in response to the requests.

¹Although the city also initially raised sections 552.103, 552.107, 552.108, 552.119, 552.130, 552.136, and 552.137, you have submitted no arguments in support of the applicability of those exceptions. Accordingly, this decision does not address sections 552.103, 552.107, 552.108, 552.119, 552.130, 552.136, and 552.137. See Gov't Code § 552.301(e)(1)(A).

We note that the city received previous requests for information relating to four of the officers who are the subjects of the instant requests. As a result of the previous requests, this office issued Open Records Letter Nos. 2007-15685 (2007) and 2008-8106 (2008). We have no indication that there has been any change in the law, facts, and circumstances on which the previous decisions were based. Therefore, to the extent that Open Records Letter Nos. 2007-15685 and 2008-8106 encompass any of the information that is responsive to the instant requests, the city must dispose of any such information in accordance with the previous decisions. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). To the extent that Open Records Letter Nos. 2007-15685 and 2008-8106 do not encompass the responsive information, we will address its public availability.

We next note that the city did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) requires the governmental body to submit to this office, not later than the fifteenth business day after the date of its receipt of the request for information, (1) written comments in support of the governmental body's claimed exceptions to disclosure and (2) the specific information at issue or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A), (D). If a governmental body fails to comply with section 552.301, the information at issue is presumed to be public and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ).

You state that the city received the instant requests for information on April 6, 2009. Therefore, the city's fifteen-business-day deadline under subsection 552.301(e) was April 27. The city submitted its arguments against disclosure and the responsive information at issue on June 11. Thus, the city did not comply with section 552.301, and the responsive information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because your claims under section 552.101 of the Government Code can provide compelling reasons for non-disclosure, we will address your arguments.

We initially note that the submitted information includes Part I of the previous format of a custodial death report. This office concluded that Part I of that custodial death report format is public information in accordance with article 49.18(b) of the Code of Criminal Procedure. *See* Open Records Decision No. 521 (1989). Parts II through V of that format are not public information. *See id.* Therefore, the city must release Part I of the custodial death report, which we have marked, pursuant to article 49.18(b) of the Code of Criminal Procedure.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 550.065(b) of the Transportation Code 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 an accident report to a person who provides two of the following three items 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. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* As you note, the submitted information includes copies of a Texas Peace Officer's Accident Report that was completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). As you also note, the requestor has not provided two of the three items of information specified by section 550.065(c)(4). We therefore agree that the city must withhold the copies of the accident report that we have marked pursuant to section 550.065(b) of the Transportation Code.

You also raise section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, which provides in 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 Subchapters B, D, and E.

Fam. Code § 58.007(c); *see id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code tit. 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have

been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We note that 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. We find that some of the submitted information consists of law enforcement records and files that involve a juvenile suspect. The city must withhold that information, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. We note, however, that section 58.007(c) is not applicable to the submitted records of the related administrative investigation. Therefore, the city may not withhold any of the information relating to the administrative investigation under section 552.101 on the basis of section 58.007.

Section 552.101 also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has determined that common-law privacy protects the identities of juvenile offenders. *See* Open Records Decision No. 384 (1983); *cf.* Fam. Code § 58.007(c). The city must withhold the marked information that identifies the juvenile offender under section 552.101 in conjunction with common-law privacy.

We note that the remaining information includes a police officer’s social security number. Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code.² Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. The city must withhold the social security number that we have marked under section 552.117(a)(2).

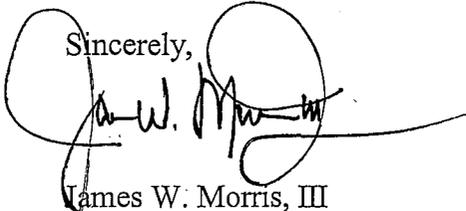
In summary: (1) the city must dispose of any responsive information encompassed by Open Records Letter Nos. 2007-15685 and 2008-8106 in accordance with those decisions; (2) the marked Part I of a custodial death report must be released pursuant to article 49.18(b) of the Code of Criminal Procedure; (3) the marked copies of the accident report must be withheld pursuant to section 550.065(b) of the Transportation Code; (4) the city must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code and common-law privacy; and (5) the social security number that we have marked must be withheld under section 552.117(a)(2) of the Government Code. The rest of the responsive information must be released.

²Unlike other exceptions to disclosure under the Act, this office will raise section 552.117 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 346961

Enc. Submitted information

c: Requestor
(w/o enclosures)