



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2009

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001

OR2009-11836

Dear Ms. De La Garza:

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# 352941 (Houston Request No. 15655).

The Houston Police Department (the "department") received requests for incident report numbers 156873404C and 69185193G. You claim that the submitted reports are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. 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 received the requests for information on May 29, 2009. The department did not request a decision from this office until June 16, 2009, more than ten business days after receiving the requests. *See* Gov't Code § 552.301(b). You do not inform us that the department was closed for any business days between May 29, 2009 and June 16, 2009. Thus, the department failed to comply with the requirements mandated by section 552.301.

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* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); 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). Although you raise section 552.108 of the Government Code as an exception to disclosure of incident report number 69185193G, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 discretionary). Consequently, the department may not withhold incident report number 69185193G pursuant to section 552.108 of the Government Code. However, sections 552.101, 552.130, and 552.147 of the Government Code can provide compelling reasons to overcome this presumption; therefore, we will consider whether these exceptions require the department to withhold any of the submitted information.

You assert incident report number 156873404C is excepted under section 552.101 of the Government Code, which excepts 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. You raise section 552.101 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). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after

September 1, 1997. You represent that incident report number 156873404C involves allegations of juvenile delinquent conduct that occurred after September 1, 1997. *See* Fam. Code § 51.03 (defining "delinquent conduct" for purposes of Fam. Code § 58.007). You do not inform us, and it does not appear, that any of the exceptions in section 58.007 apply to the information in this report; therefore, incident report number 156873404C is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.¹

You also assert that the information you marked in incident report number 69185193G is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle license plate and registration information we marked under section 552.130.

In summary, the department must withhold incident report number 156873404C in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, as well as the Texas motor vehicle license plate and registration information we marked in incident report number 69185193G under section 552.130 of the Government Code. The remaining information must be released.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

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

Ref: ID# 352941

Enc. Submitted documents

cc: Requestor
(w/o enclosures)