



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2010

Mr. Bryan McWilliams
Public Safety Legal Advisor
Assistant City Attorney
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971

OR2010-07903

Dear Mr. McWilliams:

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# 386748.

The Amarillo Police Department (the "department") received a request for all reports that include the requestor's name. You claim the submitted 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.

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. *See* Gov't Code § 552.301(b). Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the

documents. *See id.* § 552.301(e). In this instance, the department received the request for information on April 14, 2010 but did not request a ruling from our office until May 10, 2010. Consequently, we find that the department failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural 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 id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 586 (1991). This office has held a compelling reason exists to withhold information when third party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). Because section 552.101 can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

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 information that other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. Fam. Code § 51.02(2). Section 58.007 provides in relevant 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:

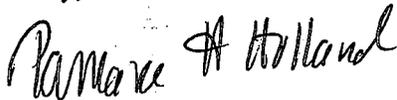
- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning 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.

Id. § 58.007(c). The submitted incident reports involve juvenile delinquent conduct that occurred after September 1, 1997. *Id.* § 51.03(a) (defining "delinquent conduct"). It does not appear any of the exceptions in section 58.007 apply; therefore, this information is confidential pursuant to section 58.007(c) of the Family Code. Accordingly, we agree the department must withhold the submitted incident reports under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

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, toll free at (888) 672-6787.

Sincerely,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/jb

Ref: ID# 386748

Enc. Submitted documents

c: Requestor
(w/o enclosures)