



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2010

Ms. Elizabeth W. Wallace
Wallace Law Offices
For City of Sonora
P.O. Box 1508
Sonora, Texas 76950-1508

OR2010-16412

Dear Ms. Wallace:

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# 398407.

The City of Sonora (the "city") received a request for the requestor's criminal records. 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.

Initially, we must address the city's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general 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 Gov't Code § 552.301(e)*. You state the city received the present request for information on August 10, 2010. Thus, the city's fifteen-business-day deadline was September 3, 2010. However, you did not submit

to this office most of the information requested until October 27, 2010.¹ Consequently, we find the city failed to comply with the requirements of section 552.301 with respect to the information submitted on October 27, 2010.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Because section 552.101 of the Government Code 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 protected by other statutes, including section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Open Records Decision No. 680 at 4 (2004); *See also* Fam. Code §§ 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”), .02(2) (defining “child” as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). 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

¹We note that you submitted a list of criminal cases and citations involving the requestor on August 25, 2010. However, this list does not constitute a representative sample of the requested information.

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.

...

(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.

Id. § 58.007(c), (e), (j). Case number 080199 is a law enforcement record that involves juveniles accused of delinquent conduct that occurred after September 1, 1997. Furthermore, it does not appear that any of the exceptions in section 58.007 apply in this instance. Accordingly, case number 080199 is confidential under section 58.007(c) of the Family Code, and the city must withhold it in its entirety under section 552.101 of the Government Code. Case numbers 05092, 060198, and 060291 are also law enforcement records that involve juveniles accused of delinquent conduct that occurred after September 1, 1997. We note, however, that the requestor is one of the juvenile offenders listed in case numbers 05092, 060198, and 060291. Therefore, the requestor has a right to inspect law enforcement records concerning himself under section 58.007(e). *See id.* § 58.007(e). However, personally identifiable information concerning any other juvenile suspects, offenders, victims, or witnesses must be redacted pursuant to section 58.007(j)(1) of the Family Code. *See id.* § 58.007(j)(1). Accordingly, the city must withhold the information we have marked in case numbers 05092 and 060198 under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. Additionally, section 58.007(j)(2) provides that information subject to any other exception

to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). We note case number 060198 contains information subject to section 552.130 of the Government Code.² Accordingly, we will address the applicability of section 552.130 to case number 060198. Upon review, we find the remaining submitted reports do not contain any juveniles listed as suspects, offenders, or defendants; therefore, the remaining reports may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1), (2). Accordingly, the city must withhold the Texas motor vehicle record information we have marked in case number 060198, and in the remaining reports, under section 552.130 of the Government Code.³

In summary, the city must withhold case number 080199 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must withhold the information we have marked in case numbers 05092 and 060198 under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The city must also withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.⁴

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.

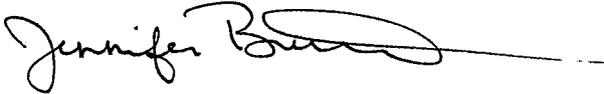
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note that the information being released contains confidential information regarding the juvenile suspect to which the requestor has a right of access under section 58.007(e) of the Family Code, as well as motor vehicle information to which the requestor has a right of access under section 552.023(a) of the Government Code. *See* Fam. Code § 58.007(e); Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person’s privacy interests). Thus, if the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office. We further note the information being released contains social security numbers not belonging to the requestor. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

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,

A handwritten signature in black ink, appearing to read "Jennifer Burnett", with a long horizontal line extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 398407

Enc. Submitted documents

c: Requestor
(w/o enclosures)