



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 9, 2010

Mr. David M. Douglas  
Assistant City Attorney  
City of Austin, Law Department  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2010-16956

Dear Mr. Douglas:

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# 399747.

The Austin Police Department (the "department") received two requests for a specified police report. 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 representative sample of information.<sup>1</sup> We have also received and considered comments submitted by the second requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, you acknowledge and we agree that the department did not comply with its ten business-day deadline under section 552.301 of the Government Code in requesting this decision. *See id.* § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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). 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 the department's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address your argument under that exception.

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. This section encompasses information protected by other statutes such as section 58.007 of the Family Code, which provides in pertinent part as follows:

(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.

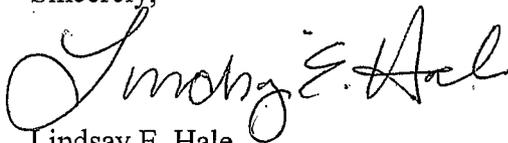
Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The information at issue involves a child engaged in delinquent conduct that occurred after September 1, 1997. As such, this information constitutes a juvenile law enforcement record that is confidential pursuant to section 58.007(c). It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. The second requestor argues that she seeks only information regarding the three adult suspects. However, we note that the courts have previously addressed this issue in *Loving v. City of*

*Houston*, 282 S.W.3d 555, 559-60 (Tex. App.—Houston [14th Dist.] 2009), in which they held that a single law enforcement record that references both adult and juvenile suspects must be withheld in its entirety under section 58.007, even if the request seeks just the adult record. The court in that instance also noted the absence of any statutory authority for the proposition that information concerning the juvenile suspect could be redacted and the remaining information released. *Id.* Accordingly, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 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](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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/bs

Ref: ID# 399747

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)