



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 15, 2011

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

OR2011-03561

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# 411746 (COSA File No. 2010-7232).

The San Antonio Police Department (the "department") received a request for the transcription and/or audio recordings of all incoming 9-1-1 calls and dispatch recordings between department dispatch, officers, or the Northside Independent School District Police Department and/or Northside Independent School District peace officers relating to a specified incident, including a listing of phone numbers from which the calls were made, and all mobile data transmission recordings pertaining to the same incident. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the request seeks only the transcription and/or audio recordings of 9-1-1 calls and dispatch recordings and mobile data transmission recordings. Accordingly, the submitted incident report is not responsive to the instant request for information. This decision does not address the public availability of the submitted information that is not responsive to this request, and the department need not release that information in response to the request.

Next, we note the submitted audio recordings were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-00012

(2011). In that ruling, we held the department may withhold the audio recordings under section 552.108(a)(1) of the Government Code. As we have no indication the law, facts, or circumstances on which the prior ruling was based have changed, the department may continue to rely on Open Records Letter No. 2011-00012 as a previous determination and withhold or release any previously ruled upon information in accordance with that ruling.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We note that the submitted mobile data transmission records were not at issue in the previous ruling. Accordingly, we will address your argument against the disclosure of this information.

We must address the department's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). We note the City of San Antonio was closed on December 24, 27, and 31 for city holidays. You state the department received the request for information on December 15, 2010. Accordingly, the tenth business day after the receipt of the instant request was January 3, 2011. The department's request for a ruling from this office was postmarked January 10, 2011. See *id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Accordingly, the department did not request a decision from this office within the ten-business-day period prescribed by subsection 552.301(b).

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 the requested information is public and must be released unless a compelling reason exists 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, 381-82 (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 compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records

¹We note that this requestor, as the representative of the parent of the deceased juvenile to whom this information relates, has a right of access under section 58.007(e) of the Family Code to law enforcement records relating to this juvenile. However, we also note section 58.007(j)(2) provides that before information may be released under section 58.007(e) information subject to any other exception to disclosure under the Act or other law must be redacted. See *id.* § 58.007(j)(2).

Decision No. 150 at 2 (1977). Although you claim an exception to disclosure under section 552.108 of the Government Code, that section is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with section 552.301, the department has waived its claim under section 552.108 for the remaining information. Therefore, the department may not withhold any of the remaining information under section 552.108. However, we note a portion of the remaining information is subject to section 552.101 of the Government Code, which can provide a compelling reason to withhold information.² Accordingly, we will address the applicability of that exception to the remaining 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 other statutes make confidential, 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.

...

(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.

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

Fam. Code § 58.007(c), (e). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of the Family Code). 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). Portions of the mobile data transmission records relate to allegations of delinquent conduct that occurred after September 1, 1997; therefore, this information is subject to section 58.007. Although the juvenile suspect to whom these records relate is deceased, section 58.007 is not solely intended to protect the privacy interests of juveniles. Therefore, the juvenile suspect’s death does not remove information relating to the deceased juvenile from the ambit of section 58.007(c). In this instance, however, the requestor is the representative of the deceased juvenile suspect’s parent. Therefore, section 58.007(e) allows the requestor access to the deceased juvenile’s law enforcement records. *Id.* § 58.007(e). Accordingly, the department must release the portions of the mobile data transmission records relating to the deceased juvenile suspect to this requestor. We note a portion of the remaining mobile data transmission records relates to allegations of conduct indicating a need for supervision against a different juvenile that occurred after September 1, 1997. The requestor does not have a right of access under section 58.007(e) to law enforcement records pertaining to this juvenile. We conclude this information, which we have marked, is subject to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code on that basis. The remaining information in the mobile data transmission records must be released.

In summary, the department may continue to rely on Open Records Letter No. 2011-00012 as a previous determination and withhold the submitted audio recordings under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked in the mobile data transmission records under section 552.101 in conjunction with section 58.007(c) of the Family Code. The remaining mobile data transmission records must be released.³

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,

³We note the information being released contains confidential information to which the requestor has a right of access. *See* Fam. Code 58.007(e). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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 cursive script that reads "Kate Hartfield".

Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 411746

Enc. Submitted documents

c: Requestor
(w/o enclosures)