



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 2, 2011

Ms. Donna L. Johnson  
Counsel for the City of Friendswood  
Olson & Olson, L.L.P.  
Wortham Tower, Suite 600  
2727 Allen Parkway  
Houston, Texas 77019

OR2011-11112

Dear Ms. Johnson:

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# 426061.

The City of Friendswood (the "city") received a request for the video footage from the Friendswood Library (the "library") pertaining to a specified incident involving the requestor's child. You claim the submitted video is excepted from disclosure under sections 552.101, 552.124, and 552.148 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 a copy of the written request for information. *See* Gov't Code § 552.301(e)(1)(B). The city received the request for information on May 24, 2011. You did not submit the written request for information until July 28, 2011. Consequently, we find the city has failed to comply with the requirements of 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 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 Decision No. 150 at 2 (1977). Because sections 552.101, 552.124, and 552.148 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of your claimed exceptions to the submitted video.

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. You raise sections 58.005 and 58.007 of the Family Code for the video. Chapter 58 of the Family Code pertains to the records and information of child offenders. *See* Fam. Code §§ 51.02(2)(A) (child is defined as person ten years of age or older and under seventeen years of age for purposes of Family Code), .03 (defining delinquent conduct and conduct indicating a need for supervision for Family Code purposes). Section 58.005 provides that “[r]ecords and files concerning a child, including personally identifiable information, and information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to [certain listed individuals].” *Id.* § 58.005(a). Section 58.007 provides that:

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 video pertains to an injury the requestor’s child allegedly sustained at the library. You have not submitted any arguments explaining the applicability of section 58.005 or section 58.007 to the video. Thus, you may not withhold this information

under section 552.101 of the Government Code in conjunction with section 58.005 or section 58.007(c) of the Family Code.

You also claim the video is excepted from disclosure under section 552.148 of the Government Code. This section provides:

- (a) In this section, "minor" means a person younger than 18 years of age.
- (b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from the requirements of Section 552.021:

...

- (2) a photograph of the minor[.]

Gov't Code § 552.148(a), (b)(2). You provide no explanation how the video at issue is maintained by the city for purposes related to the participation of a minor in a recreational program or activity. Accordingly, the city may not withhold the video under section 552.148 of the Government Code.

Finally, you argue the video is protected under section 552.124 of the Government Code. Section 552.124 of the Government Code provides in relevant part:

- (a) A record of a library or library system, supported in whole or in part by public funds, that identifies or serves to identify a person who requested, obtained, or used a library material or service is excepted from [disclosure] unless the record is disclosed:

...

- (2) under [s]ection 552.023[.]

...

- (b) A record of a library system that is excepted from required disclosure under this section is confidential.

*Id.* § 552.124(a)(2), (b); *see also* Open Records Decision No. 100 at 3 (1975) (identifying information or library patrons in connection with object of their attentions is confidential by constitutional law). Upon review, we agree the video reveals the identities of library patrons. We note, however, one of the library patrons in the video is the requestor's minor child. As the parent, the requestor is the child's authorized representative. Section 552.023(a) of the Government Code provides, "[a] person or a person's authorized

representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a). Pursuant to section 552.124(a)(2), the city may not withhold information subject to section 552.023 under section 552.124(a) of the Government Code. *See id.* §§ 552.023(a), .124(a)(2). Accordingly, the city must release the video.<sup>1</sup> However, in releasing the video, the city must withhold the images of the remaining library patrons under section 552.124 of the Government 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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/eb

Ref: ID# 426061

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>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.