



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2011

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

OR2011-11207

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# 430246 (COSA File No. W001990).

The San Antonio Police Department (the "department") received a request for a specified offense 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 information.

Initially, we must address the department's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See Gov't Code* § 552.301(b). In this instance, you state the department received the request for information on June 27, 2011. Accordingly, the ten-business-day deadline fell on July 12, 2011. The department's request for a decision, however, bears a post office mark reflecting it was mailed on July 13, 2011. *See id.* § 552.308(a) (ten day deadline met if request for ruling bears post office mark indicating time within ten day period). Consequently, we find the department failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that 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). In this instance, you raise section 552.101 of the Government Code. Because section 552.101 can be a compelling reason to withhold information, we will address your argument under that section.

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, such as section 58.007 of the Family Code. Section 58.007 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.

...

(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[.]

Fam. Code § 58.007(c), (e), (j)(1). The submitted report involves juveniles engaged in delinquent conduct occurring after September 1, 1997; therefore, the submitted report is subject to section 58.007(c). *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of Family Code section 58.007). We note, however, the requestor may be the parent or guardian of one of the juvenile offenders listed in the submitted report. Under section 58.007(e), a child’s parent or guardian has a right to inspect or copy law enforcement records concerning her own child. *See id.* § 58.007(e). Therefore, we must rule in the alternative. If the requestor is not the parent or guardian of one of the listed juvenile offenders, then the department must withhold the report in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Alternatively, if the requestor is the parent or guardian of the juvenile offender at issue, the department cannot withhold the report from him under section 58.007(c). *See id.* § 58.007(e). However, personally identifiable information concerning the 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). Thus, in the event the requestor is the parent or guardian of one of the listed juvenile offenders, the department must withhold the identifying information of the other juveniles under section 552.101 of the Government Code in conjunction with section 58.007(j)(1), but the remaining information must be released.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/tf

Ref: ID# 430246

Enc. Submitted documents

c: Requestor
(w/o enclosures)