



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2011

Ms. Karen Anderson
Senior Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-12874

Dear Ms. Anderson:

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# 429170 (Fort Worth PIR No. W009634).

The City of Fort Worth (the "city") received a request for police report number 04154459. You claim the submitted 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. We have also considered comments submitted by the requestor and a recruiter for the United States Army. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, you acknowledge the city did not comply with the time period prescribed by section 552.301(b) of the Government Code in seeking this ruling. *See id.* § 552.301(b). When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. *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 a showing the information is made confidential by another source of law or affects third party

interests. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider your argument under this 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 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 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.

Fam. Code § 58.007(c), (e), (j). 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. *Id.* § 58.007. For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review, we find the submitted report involves a child engaged in delinquent conduct, and therefore is subject to section 58.007. *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of section 58.007). However, this incident involves the requestor as the child offender. A governmental body may not withhold a child’s law enforcement records from the child under section 58.007(c). *Id.* § 58.007(e). Thus, the city may not withhold the submitted information from this requestor on the basis of section 58.007(c). However, section 58.007(j)(2) provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). Thus, we next turn to your argument against disclosure of the submitted information.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). You generally contend the requested report is subject to section 261.201. However, upon review, we find you have failed to demonstrate how the report at issue was used or developed in an investigation of child abuse or neglect conducted under chapter 261 of the Family Code. *See id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, the city may not withhold the submitted report under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

We note that before information may be released pursuant to section 58.007(e) of the Family Code, personally identifiable information concerning any other juvenile suspects, offenders, victims, or witnesses must be redacted pursuant to section 58.007(j)(1). *See id.* § 58.007(j)(1). Thus, the city must withhold the identifying information of the juvenile victim and witness, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. As you raise no other exceptions, the remaining submitted information must be released to this requestor.¹

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/agn

Ref: ID# 429170

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹The requestor has a special right of access to the information being released in this instance. Because such information would be confidential with respect to the general public, if the city receives another request for this particular information from a different requestor, then the city should again seek a ruling from this office.