



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2011

Mr. O. Charles Buenger
Buenger & Associates
3203 Robinson Drive
Waco, Texas 76706

OR2011-18534

Dear Mr. Buenger:

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# 439288.

The City of Hewitt (the "city"), which you represent, received a request for offense report numbers 11-000664 and 11-0705, arrest reports related to the requestor's son and a named juvenile, information related to the officers who investigated a specified offense or interviewed the requestor's son, policy and procedure manuals, codes of conduct, all records pertaining to a specific incident, information related to 911 dispatchers on duty at a specified time, and specified vehicle mileage logs. You state that you will release some information to the requestor. You state that the city does not maintain the requested mileage logs. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). We understand you to raise sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also received comments from the requestor. See Gov't Code § 552.304 (providing interested party may submit comments stating why information should or should not be released).

Initially, we must address your assertion that the portion of the instant request seeking policy and procedure manuals is unclear. We note that administrative inconvenience in responding

¹While you do not explicitly raise sections 552.101, 552.108, 552.130, and 552.147 of the Government Code in your brief, based on your arguments, we understand you to assert these sections as exceptions to disclosure of the submitted information.

to a request for information is not grounds for refusing to comply with a request under the Act. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976). A governmental body is required to make a good-faith effort to relate a request to responsive information that it holds or to which it has access. *See* Open Records Decision No. 561 at 8 (1990) (construing statutory predecessor). Moreover, if what information is requested is unclear to a governmental body, a governmental body may ask the requestor to clarify the request or discuss with the requestor how the scope of the request might be narrowed. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). *See also* *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You do not inform us that the city has asked the requestor to clarify or narrow the scope of this category of the request. Therefore, to the extent any information responsive to this category of the request exists, the city must release it unless it has been demonstrated to come within an exception to public disclosure. *See* Gov't Code §§ 552.006, .221, .301, .302; Open Records Decision No. 664 (2000).

Next, we must address the city's obligations under section 552.301 of the Government Code which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Further, a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e)(1)(D). The city received the request for information on September 26, 2011. Accordingly, the city's ten day deadline was October 10, 2011. However, the city did not seek a ruling from our office until October 11, 2011. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Additionally, as of the date of this request, the city has not submitted to our office any information pertaining to offense report number 11-0705, with the exception of the dash cam recording, nor has it submitted the requested policy and procedures manuals. Accordingly, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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 (Tex. App.— Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the 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). You assert section 552.108 as an exception to disclosure. However, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally) 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, it does not present a compelling reason to withhold information. Therefore, the city may not withhold any of the requested information under section 552.108 of the Government Code. However, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption that the information is public, we will consider your arguments for withholding the submitted information under these exceptions.

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. The relevant language of section 58.007 reads 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). 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). Upon review, we find offense report number 11-000664 involves a juvenile engaged in delinquent conduct occurring after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 of the Family Code apply. Accordingly, the city must withhold the information pertaining to offense report number 11-000664 under

section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.²

In summary, the city must withhold the information pertaining to offense report number 11-000664 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The remaining information 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, 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,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 439288

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive for this information, we need not address your remaining arguments against its release.

³We note that the information being released contains the arrestee's driver's license and social security numbers. However, the requestor, as the authorized representative of the arrestee, has a right of access to this information under section 552.023 of the Government Code. See Gov't Code § 552.023. Because the requestor has a right of access to this information that would be confidential with respect to the general public, if the city receives another request for this information from an individual other than this requestor, the city must again seek a ruling from this office.