



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 18, 2016

Mr. James Kopp  
Assistant City Attorney  
Office of the City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2016-23321

Dear Mr. Kopp:

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# 632097 (COSA File No. W133860).

The City of San Antonio (the "city") received a request for all photographs of a specified vehicle pertaining to a specified case. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor only seeks photographs. Accordingly, the remaining submitted information is not responsive to the instant request. The city need not release non-responsive information in response to this request, and this ruling will not address that information.

Next, we must address the city's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See* Gov't Code § 552.301(b). You state the city received the request for information on August 8, 2016. Thus, the city's ten-business-day deadline was August 22, 2016. The envelope in which the city sent its request for a ruling is post-marked August 23, 2016. *See id.* § 552.308 (describing rules for calculating submission dates of

documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, the city failed to comply with the requirements of section 552.301(b) of the Government Code.

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 that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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); 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. *See* Open Records Decision No. 150 at 2 (1977). We note section 552.108 of the Government Code is discretionary in nature. This exception serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, no portion of the submitted information may be withheld under section 552.108. However, your claim under section 552.101 of the Government Code makes information confidential and thus is a compelling reason to overcome the presumption of openness. Therefore, we will address the applicability of section 552.101 to the responsive 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 section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). The relevant portion of section 58.007 provides:

(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.

*Id.* § 58.007(c). *See also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age at the time of the reported conduct). Upon review, we find the information at issue involves delinquent conduct by a child that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of section 58.007). Further, it does not appear that any of the exceptions in section 58.007 apply. Therefore, the responsive information is confidential under section 58.007(c) of the Family Code and the city must withhold it under section 552.101 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/bhf

Ref: ID# 632097

Enc. Submitted documents

c: Requestor  
(w/o enclosures)