



December 21, 1999

Mr. Charles M. Allen, II  
Richardson Police Department  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR99-3696

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130478.

The Richardson Police Department (the "department") received a request for police reports regarding an individual and all records related to calls made to a particular address. You indicate that you have already released certain responsive documents to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

We initially note that the requestor has asked for copies of police records related to an individual. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses common-law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, because the requestor asks for all unspecified police records of a named individual, we believe the request implicates this individual's right to privacy. Thus, to the extent that the department has records responsive to the request in which the named individual is a possible suspect, the department must withhold this information under section 552.101. *See id.*

You assert that certain documents you have submitted are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after

September 1, 1997 are confidential under section 58.007 of the Family Code. Fam. Code § 58.007(c). The relevant language of section 58.007(c), as amended by the Seventy-sixth Legislature, 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 Subchapter B.

Several of the submitted documents involve juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Thus, you must withhold these records in their entirety. We have marked the records that are made confidential by amended section 58.007 of the Family Code.

Additionally, we note that several of the documents are reports of alleged instances of abuse of a juvenile. Section 261.201(a) of the Family Code provides that

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

We have marked the information that we believe consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code.<sup>1</sup> You have not informed this office of any rules the department has adopted that would permit access to the requested records. We, therefore, conclude that the marked records are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the department must not release the requested records to the requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. For your convenience, we have marked the remaining documents which must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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<sup>1</sup>We note that a parent or other legal representative of a victim of alleged child abuse or neglect may have a right to obtain from the Texas Department of Protective and Regulatory Services portions of the information concerning a report of alleged abuse or neglect. Fam. Code § 261.201(g).

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson  
Assistant Attorney General  
Open Records Division

CGD/jc

Ref: ID# 130478

Encl. Marked documents

cc: Ms. Virginia Escabedo  
326 Edgehill Boulevard  
Richardson, Texas 75081  
(w/o enclosures)