



June 24, 2002

Ms. Denise G. Obinegbo
Open Records Specialist
City of Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2002-3425

Dear Ms. Obinegbo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164828.

The City of Richardson Police Department (the “department”) received a request for all incident reports at a certain address for the time period of 1995 to the present. You state that the department has released to the requestor portions of the requested information. You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.108(a)(1) and (2) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from required public disclosure information that is deemed confidential by law, either constitutional, statutory, or by judicial decision. For Service No. 00-018563, you raise section 552.101 and state that the document contains confidential medical information. The Medical Practice Act, chapter 159 of the Occupations Code, governs access to medical records and generally prohibits the public release of a patient’s medical records without the patient’s consent. Occ. Code §§ 159.002, .004, .005; *see* Open Records Decision No. 598 (1991). The doctrine of common-law privacy may apply to medical information if the information is highly intimate or embarrassing and of no legitimate public interest. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). You state that the department “deems the complete investigative file to be exempt from production under [s]ection 552.101.” However, in this case, the department failed to submit to this office an

incident report for Service No. 00-018563, if it exists. You submitted to this office a call card for Service No. 00018563 with portions of the information blacked out. We cannot read the portions of the information that have been blacked out. Consequently, we cannot determine the applicability of section 552.101 to this information. The department must therefore release the medical information to the requestor.¹

You raise section 58.007 of the Family Code for the juvenile law enforcement records. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) 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.

We find that Incident Report No.98-050787 involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, this report is confidential pursuant to section 58.007(c) of the Family Code. You must withhold this report from disclosure under section 552.101 of the Government Code.

Since the conduct in the other juvenile reports occurred before September 1, 1997, we must consider the applicability of section 58.007's predecessor provisions. For conduct that occurred during the time period of January 1, 1996 through August 31, 1997, former 58.007 applies. Under former section 58.007, juvenile law enforcement records maintained by law enforcement agencies are not confidential. *See* Open Records Decision No. 644 (1997). Thus, for juvenile law enforcement records subject to former section 58.007, we will consider the applicability of other exceptions. Juvenile law enforcement records concerning conduct that occurred before January 1, 1996, are governed by former section 51.14(d) of the

¹We caution that the Public Information Act prohibits the release of confidential information. *See* Gov't § 552.353.

Family Code, which is continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 06, 1995 Tex. Gen. Laws 2517, 2591. Under former section 51.14(d), juvenile law enforcement records are confidential. We have determined that the following reports are confidential under former section 51.14(d): Incident Report Nos. 95-067377, 95-065336, and 95-099533.

The requested information includes records that are deemed confidential under section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

(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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because some of the reports relate to an allegation of child abuse, they are within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the following reports are confidential pursuant to section 261.201 of the Family Code: Incident Report Nos. 02-009048, 01-037918, and 98-046848. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the department must withhold these reports from disclosure under section 552.101 of the Government Code as information made confidential by law. Furthermore, because section 261.201(a) protects all “files, reports, communications, and working papers” related to an investigation of child abuse, the department must not release front page offense report information in cases of alleged child abuse.

We turn now to your section 552.108 claim. You raise both subsections (a) and (b) of section 552.108. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” You claim section 552.108(a) applies to Incident Report No. 95-099533. However, as we have determined that this report is excepted from

disclosure under section 552.101 of the Government Code in conjunction with section 51.149(d) of the Family Code, we need not address your section 552.108(a) claim.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that Incident Report Nos. 98-082383, 97-058401, 96-081067, 96-061650, 95-099269, 95-065430, and 95-058605 pertain to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to these reports.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the listed reports from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

However, with respect to two of the reports, Incident Report Nos. 96-081067 and 97-061650, you must withhold the basic information based on section 552.101 in conjunction with the common-law right to privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found.*, 540 S.W.2d 668, 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. As we consider the basic information in these two reports to be intimate or embarrassing and of no legitimate public interest, we find that department must withhold the basic information from disclosure based on section 552.101 of the Government Code.

In summary, the department must withhold from disclosure Incident Report No. 98-050787 based on section 552.101 in conjunction with Family Code section 58.007; Incident Report Nos. 95-067377, 95-065336, and 95-099533 based on section 552.101 in conjunction with Family Code section 51.14(d); and Incident Report Nos. 02-009048, 01-037918 and 98-046848 based on section 552.101 in conjunction with section 261.201 of the Family Code. With the exception of the basic information, the department may withhold the following incident reports from disclosure based on section 552.108(a)(2): Incident Report

Nos. 98-082383, 97-058401, 96-081067, 96-061650, 95-099269, 95-065430, and 95-058605. The department must withhold the basic information in Incident Report Nos. 96-081067 and 96-061650 based on section 552 101. The department must release the medical information for Service No. 00018563.

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).

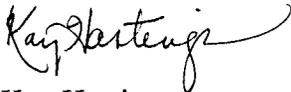
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 164828

Enc: Submitted documents

c: Mr. Frank Foster
1701 North Plano Road
Richardson, Texas 75081
(w/o enclosures)