



August 6, 2002

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0317

OR2002-4311

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166786.

The Mesquite Police Department (the "department") received a request for all department records pertaining to a specified address from 1996 through the present. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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." This section encompasses information protected by other statutes. 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.

You indicate that the responsive documents include a Child Protective Services report and a police incident report relating to an allegation of child abuse or neglect. Furthermore, upon review we find that incident report number 010220025334 also relates to an allegation of child abuse or neglect. Thus, we determine that the Child Protective Services report, incident report number 020504052629, and incident report number 010220025334 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, these documents, which we have marked, are confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute)*. Accordingly, the department must withhold these documents from disclosure under section 552.101 of the Government Code as information made confidential by law.

Next, you inform us that some of the records at issue pertain to juvenile conduct. 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. 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.

Several of the submitted incident reports and offense reports involve a runaway, conduct which is within the scope of section 58.007. *See Fam. Code § 51.03(a)(3)* (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return"). It does not appear that any of the exceptions in section 58.007 apply; therefore, these reports are confidential pursuant to section 58.007(c) of the Family Code. We have

marked the reports that the department withhold under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

You claim that the telephone numbers that you have highlighted are excepted from disclosure pursuant to section 552.101 in conjunction with chapter 772 of the Health and Safety Code. We assume that any emergency 911 district involved here was established in accordance with chapter 772, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code make the originating telephone numbers and addresses of 911 callers furnished by a service supplier confidential. *See* Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. *See* Health & Safety Code § 772.401, *et seq.* Thus, if the emergency communication district here is subject to section 772.118, 772.218 or 772.318 of the Health and Safety Code, the originating telephone numbers that you have highlighted are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code. Otherwise, the department must release these numbers to the requestor.

We note that the submitted documents contain social security numbers that may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security number and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the district attorney pursuant to any provision of law enacted on or after October 1, 1990.

We note that a portion of the submitted information must be withheld under section 552.101 in conjunction with the common-law right of privacy. The doctrine of common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have found that personal financial information

not relating to a financial transaction between an individual and a governmental body is protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We have marked the personal financial information in the submitted documents that must be withheld under section 552.101 in conjunction with common-law privacy.

Finally, you claim that a portion of the information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. We have marked information that must be withheld from disclosure under section 552.130 of the Government Code.

In summary, the department must withhold the Child Protective Services report, incident report number 020504052629, and incident report number 010220025334 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We have marked the offense reports and incident reports that must be withheld under section 552.101 in conjunction with section 58.007 of the Government Code. If the emergency communication district here is subject to section 772.118, 772.218 or 772.318 of the Health and Safety Code, the originating telephone numbers that you have highlighted are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code. Social security numbers may be confidential pursuant to section 552.101 and federal law. Personal financial information must be withheld under section 552.101 of the Government Code and common-law privacy. Motor vehicle information must be withheld under section 552.130 of the Government Code. The remainder of the submitted information must be released to the requestor.

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 166786

Enc: Submitted documents

c: Ms. Melanie Goldsberry
508 9th Street
Laurel, Maryland 20707
(w/o enclosures)