



August 16, 2002

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2002-4513

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167233.

The City of Garland (the "city") received a request for a copy of "Index Offenses by Beat" for a specified address for the period May 1, 2001 to April 30, 2002. You inform us that you have provided the requestor with most of the requested information, but claim that certain information you have highlighted is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy and sections 58.007 and 261.201 of the Family Code. We have considered the exception 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. Section 552.101 encompasses information protected by other statutes. Section 261.201 of the Family Code provides in part:

- (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.

Fam. Code § 261.201(a). We note that a "child" is defined for purposes of section 261.201(a) as a "person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes." *See* Fam. Code § 101.003(a) (defining "child"). We also note that the submitted information does not reveal on its face whether the person who was the alleged victim in these matters was a child for purposes of section 261.201 at the time of the alleged offenses. Therefore, we are unable to conclude that the highlighted information concerns a report or investigation of alleged or suspected abuse or neglect under chapter 261. Accordingly, we conclude that the city may not withhold any portion of the information from disclosure pursuant to section 552.101 in conjunction with section 261.201 of the Family Code.

You also assert that a portion of the submitted information is excepted from disclosure under section 552.101 in conjunction with 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.

Family Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997.¹ The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred.² The information in question concerns conduct that occurred on or after September 1, 1997. We note, however, that the information does not reveal on its face whether the individual involved was a “child” for purposes of section 58.007(c). Thus, we have no basis to conclude that this information is made confidential pursuant to section 58.007(c) of the Family Code.

Finally, we note that under section 552.101, information may also be withheld on the basis of common-law 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify the victim. *See also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, *writ denied*) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information).

You assert that “because the report lists the address of the offense, it would tend to identify” the victim of sexual assault. However, if the assault did not occur at the home of the victim, we are not persuaded that release of the information you have highlighted would identify the victim. Accordingly, we conclude that the city must withhold the information you have highlighted pertaining to sexual assault only if the address where the assault occurred is the home address of the victim. *See* Open Records Decision Nos. 393 (1983), 339 (1982).

To summarize, we find that none of the highlighted information is made confidential under section 58.007 of the Family Code or section 261.201 of the Family Code, and thus, it may not be withheld under either of these provisions. We conclude, however, that the city must withhold under section 552.101 of the Government Code in conjunction with common-law privacy the information you have highlighted pertaining to sexual assault if the address where the assault occurred is the home address of the victim. The remaining 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.

¹See Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996).

²See Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code).

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,

A handwritten signature in cursive script, appearing to read "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 167233

Enc. Submitted documents

c: Mr. Wayne Fogle
Compliance Professionals, Inc.
P.O. Box 381386
Duncanville, Texas 75138-1386
(w/o enclosures)