OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

September 3, 2002

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

OR2002-4934

Dear Mr. Dempsey:

You have asked whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 170771.

The City of Garland ("city") received two requests from the same requestor for information relating to calls and offense reports associated with certain addresses during a specified time period. You state that you have released all responsive information except for the reports that you submitted to this office. You claim that portions of the submitted information are excepted from required public disclosure by sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that with regard to the first of the two instant requests the city has not sought an open records decision from this office within the ten business day time period prescribed by section 552.301 of the Government Code. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, *no writ*); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, *no writ*); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest exists when some other source of law makes the information confidential or when third party interests are at stake. *See* Open Records Decision No.150 at 2 (1977). As the presumption of openness can be overcome by a showing that information is confidential by law, we will consider your arguments under sections 552.101 and 552.130.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This encompasses confidentiality provisions such as Family Code section 58.007, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. 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.

You assert that all of the submitted information labeled "Juvenile Records" involves juvenile conduct that occurred after September 1, 1997. We do not agree and we have marked the portion of this information that does not involve juvenile conduct. We agree that the unmarked remainder of the submitted information labeled "Juvenile Records" does involve juvenile conduct that occurred after September 1, 1997. Because it does not appear that any of the exceptions in section 58.007 apply, we find that the unmarked portions of the submitted information labeled "Juvenile Records" are confidential pursuant to section 58.007(c) and must be withheld per section 552.101. However, the marked portion of the submission labeled "Juvenile Records" is not similarly excepted and must be released to the requestor.

We now address your section 552.101 argument relating to section 261.201(a) of the Family Code. Section 261.201(a) provides:

> (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 the submitted information labeled "Possible Abuse or Injury to a Child" relates to an allegation of child abuse, the documents are within the scope of section 261.201 of the Family Code. You have not indicated that the city 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 requested documents are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold this information from disclosure under section 552.101 of the Government Code as information made confidential by law.

Finally, we address your argument under section 552.130 of the Government Code, which provides in relevant part:

> (a) Information is excepted from the requirement of Section 552.021 if the information relates to:
>
> > (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
> >
> > (2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, we agree that you must withhold the Texas license plate number marked in the submission labeled "Motor Vehicle Information" under section 552.130.

In summary, we find that (1) the city must withhold the submitted information labeled "Juvenile Records" except for the portion we have marked for release; (2) the city must withhold in its entirety the submitted information labeled "Possible Abuse or Injury to a Child;" and (3) the city must withhold the Texas license plate number as marked in the submitted report labeled "Motor Vehicle Information."

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).

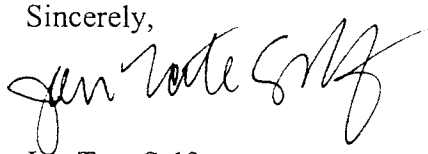
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Jon Tate Self
Assistant Attorney General
Open Records Division

JTS/seg

Ref: ID# 170636

Enc: Submitted documents

c: Ms. Judy Johnson-Ukpe
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(w/o enclosures)