OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 29, 2003

Ms. Catherine C. Kemp
Records Supervisor
Rowlett Police Department
P.O. Box 370
Rowlett, Texas 75030-0370

OR2003-5198

Dear Ms. Kemp:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185009.

The Rowlett Police Department (the "department") received a request for all calls or reports pertaining to a specified address for a certain time period. We understand you to claim that the requested information is excepted from disclosure under section 552.101 of the Government 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." This section encompasses the common law right to privacy, which 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). The types 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. *Id.* at 683. 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, the requestor does not ask the department to compile records on any particular individual. Instead, she seeks records

pertaining to a specific address. Because this request does not implicate the privacy of an individual, we conclude that the privacy concerns expressed in *Reporters Committee* are not implicated here. Furthermore, we have reviewed the submitted information and find that none of it is both intimate or embarrassing and not of legitimate public interest. Thus, none of the submitted information may be withheld under section 552.101 on the basis of common law privacy.

We also understand you to assert that a portion of the requested information is made confidential by statute. Section 552.101 also encompasses statutory confidentiality provisions such as section 58.007 of the Family Code. This section governs law enforcement records that relate to juvenile offenders and provides:

> (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.

Fam. Code § 58.007(c). We have reviewed the submitted information and agree that incident report number 02041889 involves allegations of juvenile conduct in violation of penal statutes that occurred after September 1, 1997. *See* Fam. Code § 51.02(2) (providing that in title 3 of Family Code, "child" means person who is ten years of age or older and under seventeen years of age). Thus, this report is subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, this report is confidential in its entirety in accordance with section 58.007(c) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code.

We also note that the submitted information includes motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that "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." However, the exception in section 552.130 is based on privacy principles. Therefore, the requestor is entitled to her own driver's license number and any information pertaining to

motor vehicles in which she owns an interest. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates on grounds that information is considered confidential by privacy principles). Thus, under section 552.130 of the Government Code, the department must withhold the marked motor vehicle record information to the extent that it pertains to motor vehicle records issued by authorized agencies of this state to which the requestor does not have a special right of access.

In summary, incident report number 02041889 must be withheld under section 552.101 as information that is confidential by law. Pursuant to section 552.130, the department must withhold any of the marked motor vehicle record information that pertains to Texas-issued motor vehicle records to which the requestor does not have a special right of access. The remainder of the submitted information 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).

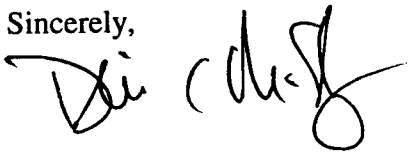
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 body. *Id.* § 552.321(a); *Texas Dep't of Pub. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/sdk

Ref: ID# 185009

Enc. Submitted documents

c: Ms. Melissa Dison
3907 Brandon Park Drive
Garland, Texas 75044
(w/o enclosures)