



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2003

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2003-6737

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188291.

The City of Fort Worth (the "city") received a request for "call history and police reports" concerning a particular address. You state that you have "made the majority of the records available to the requestor" but claim that the information you have submitted for our review is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You contend that the records submitted as Exhibit C are confidential because they constitute law enforcement records concerning juvenile conduct. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that is made confidential by statute. Section 58.007 of the Family Code 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). For purpose of this section, “child” means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Having reviewed Exhibit C, we agree that this information is made confidential by section 58.007, and none of the exceptions appear to apply. We therefore conclude that, pursuant to section 552.101 of the Government Code, the city must withhold Exhibit C as information made confidential by law.

Section 552.101 also incorporates section 261.201(a) of the Family Code, which 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.

For purposes of this section, a “child” is defined 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” for purposes of title 5 of Family Code). Having reviewed the information submitted as Exhibit D, we agree that it constitutes “files, reports, records, communications, and working papers used or developed in an investigation” under chapter 261 of the Family Code. You state that the city has not adopted any rules that govern the release of this type of information. We therefore conclude that Exhibit D is confidential pursuant to section 261.201 of the Family Code and must therefore

be withheld in its entirety pursuant to section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).¹

Although you request a previous determination regarding these types of information, we decline to issue one at this time. Accordingly, 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).

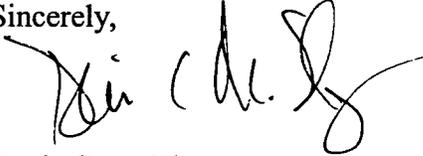
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

¹We note, however, that if the Texas Department of Regulatory Services has created a file on this incident, the child's parent(s) may have the statutory right to review that file. See Fam. Code § 261.201(g).

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 black ink, appearing to read "Denis C. McElroy". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 188291

Enc. Submitted documents

c: Ms. Melyssa Willis
2550 Hodges Road
Poolville, Texas 76487
(w/o enclosures)