ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2005

Mr. Chris Settle
Assistant City Attorney
Criminal Law & Police Division
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2005-00143

Dear Mr. Settle:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 216193.

The Dallas Police Department (the "department") received a request for a copy of a specified internal affairs investigation. You claim that the some of 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." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. 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.

Fam. Code § 58.007(c). We have reviewed the submitted information and agree that the incident reports we have marked involve allegations of juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 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, these reports are subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, these reports are confidential in their 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. However, you also contend that the names of juveniles contained in the submitted affidavits and sworn statements relating to the internal affairs investigation are confidential pursuant to section 58.007. Upon review, we note that the documentation in which the names appear is not a juvenile law enforcement record. Therefore, we determine that the department may not withhold any portion of the remaining submitted information pursuant to section 552.101 in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). After reviewing the records, we agree that the information identifying the juvenile offenders is protected by privacy. *Cf.* Fam. Code § 58.007(c). Accordingly, the department must withhold the information we have marked pursuant to section 552.101 in conjunction with common law privacy.

In summary, the department must withhold the information we have marked pursuant to section 552.101 in conjunction with section 58.007 of the Family Code and common law privacy. 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.

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).

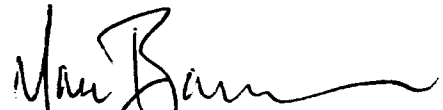
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/sdk

Ref: ID# 216193

Enc: Submitted documents

c: Mr. Gerry Westry
320 Williams
Cedar Hill, Texas 75104
(w/o enclosures)