



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 9, 2005

Mr. Jarrell Jolley
Assistant Chief
Leander Police Department
P. O. Box 319
Leander, Texas 78646-0319

OR2005-05056

Dear Asst. Chief Jolley:

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# 225989.

The Leander Police Department (the "department") received a request for information related to three specified addresses and two named individuals from September, 2003 to the present. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 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 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). You claim that the submitted information is excepted under common-law privacy based on the holding in *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). This case held that when 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 *Reporters Committee*, 489 U.S. 749. However, information that refers

to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis.

In this instance, the requestor's asks the department for information related to three specified addresses and two named individuals from September, 2003 to the present. We note that all of the submitted information is responsive to the part of the request concerning the specified addresses. Because the request for information pertaining to the addresses does not ask the department to compile records on any particular individual, it does not implicate the privacy of any individual. We therefore conclude that the privacy concerns expressed in *Reporters Committee* are not implicated by this request. As such, none of the submitted information may be withheld under section 552.101 on the basis of the holding in *Reporters Committee*.

You also claim that the submitted information is protected under section 58.007 of the Family Code.¹ This section makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 and provides in relevant part 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). Section 51.02(2)(A) of the Family Code defines "child" for purposes of section 58.007 as a "person who is . . . ten years of age or older and under 17 years of age." Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. We have reviewed the submitted information and find that it does not involve any identified suspect or offender who is a child as defined by section 51.02 of the Family Code. As such, none of the submitted information may be withheld under 552.101 of the Government Code on the basis of section 58.007 of the Family Code.

¹Section 552.101 of the Government Code also encompasses information made confidential by other statutes.

We note, however, that some of the submitted information is subject to section 261.201 of the Family Code. Subsection 261.201(a) provides as follows:

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Case report number 302699 and call for service report numbers 64110 and 58444 were used or developed in an investigation of alleged or suspected child abuse. Thus, we find that this information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given this assumption, we conclude that case report number 302699 and call for service report numbers 64110 and 58444 are confidential under section 261.201 of the Family Code and must therefore be withheld in their entirety under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).²

Next, you claim that social security numbers may be confidential under the 1990 amendments to the federal Social Security Act, which make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I). However, we note that the remaining submitted information does not contain any social security numbers or related records. As such, none of the submitted information may be withheld under section 552.101 on the basis of this federal provision.

Lastly, you claim that the motor vehicle record information in the submitted documents is excepted from disclosure under section 552.130 of the Government Code. This section prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration

²Because we reach this conclusion, we need not address your other arguments against disclosure for this information.

issued by an agency of this state. *See* Gov't Code § 552.130. Thus, we agree that the department must withhold the Texas motor vehicle record information that we have marked under section 552.130 of the Government Code.

In summary, the department must withhold case report number 302699 and call for service report numbers 64110 and 58444 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The Texas motor vehicle record information we have marked must also be withheld in accordance with section 552.130 of the Government Code. The remaining submitted 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 225989

Enc. Submitted documents

c: Ms. Tonya Denise Sherrard
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Haughton, Louisiana 71037
(w/o enclosures)