



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2005

Ms. Amy J. Ramsey
Assistant City Attorney
Office of the City Attorney
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2005-07353

Dear Ms. Ramsey:

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# 230430.

The City of Fort Worth (the "city") received a request for numerous specified incident/offense reports by report number. You state that the city will release the majority of the requested information. However, you claim that the submitted 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 section encompasses information other statutes make confidential. You state that Exhibit C of the submitted information is made confidential by section 58.007 of the Family Code. Section 58.007(c) provides in pertinent 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). We have reviewed the submitted information and find that incident report no. 00540173 in Exhibit C does not identify a juvenile suspect or offender. *See* Family Code § 51.02(2) (providing that in title 3 of Family Code, “child” means a person who is ten years of age or older and under seventeen years of age). Accordingly, this report may not be withheld under section 58.007 of the Family Code. However incident report no. 00272591 in Exhibit D and the remainder of the information in Exhibit C involve allegations of juvenile suspects engaged in delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct”). Thus, incident report no. 00272591 in Exhibit D and the remainder of the information in Exhibit C are subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, incident report no. 00272591 in Exhibit D and the remainder of the information in Exhibit C are confidential 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.

Section 552.101 also encompasses section 261.201 of the Family Code. Section 261.201 of the Family Code, provides in part:

(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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We agree that the remaining information in Exhibit D consists of reports, records, or working papers used or developed in an investigation made under chapter

261 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 remainder of Exhibit D is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the city must withhold the remainder of Exhibit D under section 552.101 of the Government Code on that basis.

We note that a portion of the information in report no. 00540173 includes motor vehicle record information. Section 552.130 of the Government Code requires the city to withhold “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 issued by an agency of this state.” We note, however, that section 552.130 is designed to protect individuals’ privacy and that the right to privacy expires at death. *See Moore*, 589 S.W.2d 489; *see also Justice*, 472 F. Supp. at 146-47; Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981) Accordingly, to the extent the motor vehicle information we have marked pertains to a person who is living and a vehicle in which a living individual has an interest, it must be withheld under section 552.130. Information from a motor vehicle record that was issued to a person who is now deceased may not be withheld under section 552.130.

In summary, section 552.130 requires the marked motor vehicle record information in report no. 00540173 to be withheld to the extent that it pertains to a record issued to an individual who remains alive. The remainder of report no. 00540173 in Exhibit C must be released. The city must withhold the following information pursuant to section 552.101: (1) the remainder of Exhibit C and incident report no. 00272591 in Exhibit D in conjunction with section 58.007; and (2) the remainder of Exhibit D in conjunction with section 261.201 of the Family Code.

We note that you ask this office to issue a previous determination permitting the city to withhold all juvenile law enforcement records and “files, reports, records, communication and working papers used or developed in an investigation of child abuse or neglect” without the necessity of requesting an attorney general decision. We decline to issue such a previous determination at this time. 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).

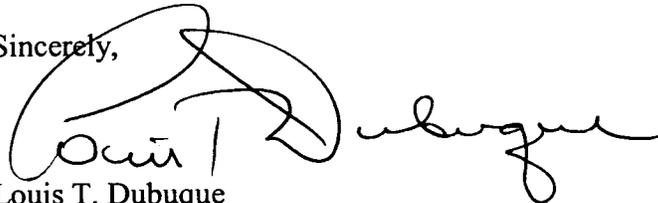
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read "Louis T. Dubuque", written over a large, stylized circular flourish.

Louis T. Dubuque
Assistant Attorney General
Open Records Division

LED/seg

Ref: ID# 230430

Enc. Submitted documents

c: Ms. Autumn Lindsay
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(w/o enclosures)