



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 29, 2005

Mr. Darrell G-M Noga  
Fee, Smith, Sharp & Vitullo LLP  
Three Galleria Tower  
13155 Noel Road, Suite 1000  
Dallas, Texas 75240

OR2005-08838

Dear Mr. Noga:

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# 233262.

The City of Coppell (the "city"), which you represent, received a request for a specified report of the city's police department (the "department"). 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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by statute. 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. Section 58.007 is only applicable to records pertaining to juvenile suspects or offenders. *See id.*; *see also* Fam. Code § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). Information relating to juvenile crime victims is not made confidential by section 58.007. *See* Open Records Decision No. 628 at 6 (1994) (predecessor statute). Furthermore, for purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). You argue the submitted information is confidential under section 58.007. However, the juvenile suspect identified in the submitted information is eight years old. Thus, the submitted information is not confidential under section 58.007 and may not be withheld under section 552.101 of the Government Code on this basis.

Section 261.201(a) of the Family Code 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 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. The submitted information consists of a report submitted to the department by Child Protective Services (CPS) as well as department report P5024779. You argue that all of the submitted information is subject to section 261.201. Report P5024799 pertains to a physical altercation between two children. You have not demonstrated that this report is information used or developed in an investigation under Chapter 261 or in providing services as a result of such an investigation. *See* Fam. Code § 261.201(a)(2). Thus, report P5024799 is not confidential in its entirety under section 261.201.

Nevertheless, we agree the submitted CPS report, in its entirety, is a record used or developed in an investigation of alleged child abuse. *See* Fam. Code § 261.201(a)(2). Further, we agree a portion of report P5024779, which we have marked, contains a report of alleged child abuse. *See* Fam. Code § 261.201(a)(1); *see also* Fam. Code § 261.001 (defining “abuse” for purposes of Family Code, ch. 261); Fam. Code § 101.003(a) (defining “child” for purposes of this section as 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). Thus, the entire CPS report and the marked information in report P5024779 are within the scope of section 261.201 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we find that this information is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). The remaining information in report P5024779 is not confidential under section 261.201 and may not be withheld under section 552.101 of the Government Code.

However, the remaining information in report number P5024779 includes Texas driver’s license numbers. Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]”<sup>1</sup> Gov’t Code § 552.130. In accordance with section 552.130 of the Government Code, the city must withhold the marked Texas driver’s license numbers. *See* Gov’t Code § 552.130. We note requestor has a special right of access to his own driver’s license number. *See* Gov’t Code § 552.023 (person or person’s authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person’s privacy interests).

Report number P5024779 also contains social security numbers. Section 552.147 of the Government Code<sup>2</sup> provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. The requestor’s social security number must be released to him. *See* Gov’t Code § 552.023. However, the city must withhold the marked social security numbers under section 552.147.<sup>3</sup>

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov’t Code § 552.147).

<sup>3</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, the city must withhold the CPS report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We have marked the portion of report number P5024779 that must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code. The city must withhold the information we have marked pursuant to sections 552.130 and 552.147 of the Government Code. The remaining 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, 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); *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 Office of the Attorney General 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. 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,

Handwritten signature of Ramsey A. Abarca in black ink.

Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/krl

Ref: ID# 233262

Enc. Submitted documents

c: Mr. Kerrick Castle  
751 Kilbridge Lane  
Coppell, Texas 75019  
(w/o enclosures)