



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2006

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046

OR2006-01842

Dear Mr. Mann:

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# 242989.

The Garland Police Department (the "department") received a request for all records pertaining to six named individuals, as well as a specified address. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception incorporates the common law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Furthermore, when a law enforcement agency is asked to compile information that relates to a particular individual as a possible criminal suspect, arrestee, or defendant, the compiled information

takes on a character that implicates that individual's right to privacy in a manner that the same information in an uncompiled state does not. See *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); Open Records Decision No. 616 at 2-3 (1993). A request for information about a specific incident or offense, however, does not require the law enforcement agency to compile an individual's criminal history and thus does not implicate the individual's privacy as contemplated in *Reporters Committee*. Furthermore, law enforcement records in which an individual is depicted as a complainant, witness, or involved party other than a suspect, arrestee, or criminal defendant do not constitute records of the criminal history of the individual and thus are not protected by common law privacy as contemplated in *Reporters Committee*.

The present request, in part, asks for any records held by the department concerning six named individuals. The requestor also seeks records regarding a specified address. You assert that this request for information, as a whole, requires the department to compile law enforcement records of the six named individuals and therefore implicates their privacy interests. We disagree. Only those records that depict any of the six named individuals as a suspect, arrestee, or criminal defendant, *and* which do not involve the specified address, are excepted from disclosure under section 552.101 of the Government Code in conjunction with the holding in *Reporters*. We have marked the records that must be withheld on this basis. Some of the records which are not confidential under the holding in *Reporters* contain information that is confidential under the doctrine of common law privacy according to the holding in *Industrial Foundation*. This information, which you have marked in blue, must be withheld under section 552.101.

You claim that some of the remaining records are protected from disclosure under section 58.007 of the Family Code. Section 552.101 also encompasses information protected by other statutes, such as section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. 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). 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.

Id. § 58.007(c). We have reviewed the records at issue and find that they involve allegations of juvenile delinquent conduct or conduct indicating the need for supervision that occurred after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of title 3 of Family Code). Thus, these records, which we have marked, are subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, these marked records are confidential in accordance with section 58.007(c) of the Family Code and must be withheld pursuant to section 552.101 of the Government Code.

You claim that some of the remaining records are excepted from disclosure under section 552.101 in conjunction with section 261.201(a) of the Family Code, which provides as follows:

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.

Id. § 261.201(a). You state that the records at issue were used or developed in investigations of alleged or suspected child abuse. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201 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). Based on your representations and our review, we find that the records at issue, which we have marked, are 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. Therefore, we assume that no such regulation exists. Given that assumption, the records we have marked are confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute)*. Accordingly, the department must withhold these records under section 552.101 of the Government Code as information made confidential by law.

Finally, you claim that some of the remaining records contain Texas motor vehicle record information. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a). After our review, we find that the Texas motor vehicle record information, which you have marked in green, must be withheld under section 552.130.

In summary, the department must withhold the information marked under section 552.101 of the Government Code in conjunction with sections 58.007 and 261.201 of the Family Code and the doctrine of common law privacy. The department must also withhold the information marked under section 552.130 of the Government Code. 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, 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

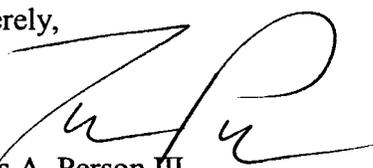
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 242989

Enc. Submitted documents

c: Ms. Marilyn W. Landon
Attorney at Law
4131 North Central Expressway, Suite 820, LB 38
Dallas, Texas 75204
(w/o enclosures)