



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2006

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P. O. Box 850137
Mesquite, Texas 75185-0137

OR2006-05471

Dear Ms. Graham:

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# 249968.

The Mesquite Police Department (the "department") received a request for all the calls and police reports pertaining to a specified address for the past ten years. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.130, and 552.147 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute. See Gov't Code § 552.101. 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, 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); *see also* Open Records Decision No. 440 at 2 (1986) (addressing statutory predecessor). You state that the records submitted under Exhibit 2 were used or developed in an investigation of alleged or suspected child abuse. *See* Fam. Code § 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 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, we find that the information in Exhibit 2 is within the scope of section 261.201 of the Family Code. You have not indicated that the investigating agency, the Texas Department of Family Protective Services (“DFPS”), has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Based on these representations and our review, we agree that the records in Exhibit 2 are confidential pursuant to section 261.201 of the Family Code and must be withheld pursuant to section 552.101 of the Government Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007(c) reads as follows:

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

¹We note that the requestor, as a parent of a child who is the subject of reported abuse or neglect, may have a right of access to certain abuse and neglect records maintained by DFPS. Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if [DFPS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

(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). Most of the incident reports submitted under Exhibit 3 pertain to cases of a juvenile runaway that occurred after September 1, 1997. This conduct is within the scope of section 58.007. See Fam. Code § 51.03(a)(3) (defining "conduct indicating a need for supervision" to include "the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return"). It does not appear that any of the exceptions in section 58.007 apply; therefore, the information we have marked is confidential pursuant to section 58.007(c) of the Family Code and must be withheld from disclosure under section 552.101 of the Government Code. However, section 58.007 only applies to law enforcement records of a juvenile who has engaged in delinquent conduct or conduct indicating a need for supervision. You have not explained how the alleged conduct in case number 00013468 falls within the statutory definition of delinquent conduct or conduct indicating a need for supervision. See *id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Therefore, we find that section 58.007 is not applicable to this report and it may not be withheld from disclosure on this basis.

Section 552.101 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. 540 S.W.2d at 683. Incident report number 00013468 contains information that is protected by common law privacy. However, in this instance, the requestor has a special right of access to this information. See Gov't Code § 552.023 (person has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); see also Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning the person himself or herself). Accordingly, report number 00013468 must be released to the requestor in its entirety.²

The department has also marked portions of incident reports submitted under Exhibit 4 to be withheld from disclosure under common law privacy. We generally agree with the department's markings. However, we find that the public has a legitimate interest in some of the information the department has marked; we have marked this information for release.

²In the event the department receives another request for this information from someone other than this requestor or her attorney, the department must ask this office for a decision whether the information is subject to public disclosure.

See Houston Chronicle Publ'g Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (there is a legitimate public interest in information regarding crime); *see also* Open Records Decision No. 408 at 10 (1984) (public has legitimate interest in information about individuals who are charged with crime). We have also marked a small amount of additional information to be withheld under common law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

Section 552.130 of the Government Code 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 issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, the department must withhold the Texas motor vehicle information it has marked in Exhibit 4 pursuant to section 552.130.

Lastly, section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department must withhold the social security numbers it has marked in Exhibit 4 pursuant to section 552.147.

In summary, the department must withhold the following: 1) the information contained in Exhibit 2 pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; 2) the information we have marked in Exhibit 3 pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code; 3) the marked information in Exhibit 4 pursuant to section 552.101 of the Government Code in conjunction with common law privacy; 4) the Texas motor vehicle information the department has marked in Exhibit 4 pursuant to section 552.130 of the Government Code; and 5) the social security numbers the department has marked in Exhibit 4 pursuant to section 552.147 of the Government Code. The requestor has a right of access to incident report number 00013468 in Exhibit 3; this incident report, along with 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); *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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 249968

Enc. Submitted documents

c: Ms. Rebecca Lawson
302 E. Kimbrough
Mesquite, Texas 75149
(w/o enclosures)